

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 1654 & 1156
91ST GENERAL ASSEMBLY

Reported from the Committee on Social Services, Medicaid and the Elderly, March 12, 2002, with recommendation that the House Committee Substitute for House Bill Nos. 1654 & 1156 Do Pass.

TED WEDEL, Chief Clerk

3508L.03C

AN ACT

To repeal sections 191.900, 191.910, 197.455, 198.006, 198.012, 198.022, 198.026, 198.029, 198.032, 198.036, 198.039, 198.067, 198.070, 198.082, 198.088, 198.090, 198.093, 198.525, 198.526, 198.532, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.263, 660.270, 660.300, 660.305, 660.315, 660.317, and 660.320, RSMo, and to enact in lieu thereof fifty-two new sections relating to protection of the elderly, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 191.900, 191.910, 197.455, 198.006, 198.012, 198.022, 198.026, 198.029, 198.032, 198.036, 198.039, 198.067, 198.070, 198.082, 198.088, 198.090, 198.093, 198.525, 198.526, 198.532, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.263, 660.270, 660.300, 660.305, 660.315, 660.317, and 660.320, RSMo, are repealed and fifty-two new sections enacted in lieu thereof, to be known as sections 187.010, 187.015, 187.020, 187.024, 187.028, 187.030, 187.034, 187.040, 187.050, 187.080, 187.084, 187.087, 187.090, 187.100, 187.102, 191.900, 191.910, 197.455, 198.006, 198.012, 198.019, 198.022, 198.026, 198.029, 198.030, 198.032, 198.036, 198.039, 198.067, 198.068, 198.082, 198.088, 198.090, 198.093, 198.525, 198.526, 198.532, 210.933, 210.936, 344.050, 491.076, 565.200, 660.030, 660.050, 660.051, 660.071, 660.252, 660.263, 660.270, 660.401, 1 and 2, to read as follows:

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

187.010. As used in this chapter unless the context clearly indicates otherwise, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual or emotional injury or harm, the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person's consent, or the wasting of financial resources including financial exploitation;
- (2) "Court", the circuit court;
- (3) "Department", the Missouri department of health and senior services;
- (4) "Director", the director of the department of health and senior services;
- (5) "Eligible adult", a person sixty years of age or older, or an adult with a disability, as defined in section 660.053, RSMo, between the ages of eighteen and fifty-nine;
- (6) "Facility" or "long-term care facility", any residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility;
- (7) "Health care provider", any person delivering or purporting to deliver any health care, including any employee, agent or other representative of such person;
- (8) "In-home services client", an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;
- (9) "In-home services employee", a person employed by an in-home services provider agency;
- (10) "In-home services provider agency", a business entity under contract with the department of social services or the department of health and senior services, or a Medicaid participation agreement, or an agency licensed by the department of health and senior services pursuant to sections 197.400 to 197.470, RSMo, that employs persons to deliver any kind of services provided for eligible adults in their private homes;
- (11) "Intermediate care facility", any premises, other than a residential care facility I, residential care facility II or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board, personal care, and basic health and nursing care services under the daily supervision of a licensed nurse and under the direction of a licensed physician to three or more residents dependent for care and supervision and who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility;
- (12) "Least restrictive environment", a physical setting where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve care and treatment objectives;
- (13) "Likelihood of serious physical harm", one or more of the following:

37 (a) A substantial risk that physical harm to an eligible adult will occur because of
38 such adult's failure or inability to provide for his or her essential human needs as
39 evidenced by acts or behavior which has caused such harm or which gives another person
40 probable cause to believe that the eligible adult will sustain such harm;

41 (b) A substantial risk that physical harm will be inflicted by an eligible adult upon
42 himself or herself, as evidenced by recent credible threats, acts or behavior which has
43 caused such harm or which places another person in reasonable fear that the eligible adult
44 will sustain such harm;

45 (c) A substantial risk that physical harm will be inflicted by another upon an
46 eligible adult as evidenced by recent acts or behavior which has caused such harm or which
47 gives another person probable cause to believe the eligible adult will sustain such harm;

48 (d) A substantial risk that further physical harm will occur to an eligible adult who
49 has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or
50 wasting of his financial resources by another person;

51 (14) "Neglect", the failure to provide services to an eligible adult by any person,
52 firm, or corporation with a legal or contractual duty to do so, when such failure presents
53 either an imminent danger to the health, safety, or welfare of the client or a substantial
54 probability that death or serious physical harm would result;

55 (15) "Protective services", services provided by the state or other governmental or
56 private organizations or individuals which are necessary for the eligible adult to meet his
57 or her essential human needs;

58 (16) "Resident", a person who by reason of aging, illness, disease or physical or
59 mental infirmity receives or requires care and services furnished by a facility and who
60 resides or boards in or is otherwise kept, cared for, treated or accommodated in such
61 facility for a period exceeding twenty-four consecutive hours;

62 (17) "Residential care facility I", any premises, other than a residential care facility
63 II, intermediate care facility or skilled nursing facility, which is utilized by its owner,
64 operator or manager to provide twenty-four hour care to three or more residents, who are
65 not related within the fourth degree of consanguinity or affinity to the owner, operator or
66 manager of the facility and who need or are provided with shelter, board and with
67 protective oversight, which may include storage and distribution or administration of
68 medications and care during short-term illness or recuperation;

69 (18) "Residential care facility II", any premises, other than a residential care
70 facility I, an intermediate care facility or a skilled nursing facility, which is utilized by its
71 owner, operator or manager to provide twenty-four hour accommodation, board and care
72 to three or more residents who are not related within the fourth degree of consanguinity

73 or affinity to the owner, operator, or manager of the facility and who need or are provided
74 with supervision of diets, assistance in personal care, storage and distribution or
75 administration of medications, supervision of health care under the direction of a licensed
76 physician and protective oversight, including care during short-term illness or
77 recuperation;

78 (19) "Skilled nursing facility", any premises, other than a residential care facility
79 I, a residential care facility II or an intermediate care facility, which is utilized by its
80 owner, operator or manager to provide for twenty-four hour accommodation, board and
81 skilled nursing care and treatment services to at least three residents who are not related
82 within the fourth degree of consanguinity or affinity to the owner, operator or manager of
83 the facility. Skilled nursing care and treatment services are those services commonly
84 performed by or under the supervision of a registered professional nurse for individuals
85 requiring twenty-four hours a day care by licensed nursing personnel including acts of
86 observation, care and counsel of the aged, ill, injured or infirm, the administration of
87 medications and treatments as prescribed by a licensed physician or dentist, and other
88 nursing functions requiring substantial specialized judgment and skill.

187.015. The department may promulgate rules necessary to implement the
2 provisions of this chapter. No rule or portion of a rule promulgated under the authority
3 of this chapter shall become effective unless it has been promulgated pursuant to chapter
4 536, RSMo.

187.020. 1. When any physician, dentist, chiropractor, optometrist, podiatrist,
2 medical resident, intern, nurse practitioner, physician's assistant, nurse, hospital and clinic
3 personnel engaged in examination, care or treatment of persons, other health practitioners,
4 funeral directors, medical examiner, coroner, psychologist, mental health professional,
5 social worker, minister, Christian Science practitioner, pharmacist, physical therapist,
6 facility administrator, employee in a facility or employee of the department of social
7 services, the department of health and senior services, or the department of mental health,
8 in-home services owner, operator or employee, adult day care worker, probation or parole
9 officer, peace officer, law enforcement official, or other person with responsibility for the
10 care of a person sixty years of age or older or an eligible adult believes or has reasonable
11 cause to believe that such person or adult, including a resident of a long-term care facility,
12 an individual residing in their home or residence, or an in-home services client, has been
13 abused or neglected, he or she shall, within twenty-four hours, report or cause a report to
14 be made to the department.

15 2. In addition to those persons required to report pursuant to subsection 1 of this
16 section, any other person who believes or has reasonable cause to believe that a person

17 sixty years of age or older or an eligible adult, a resident of a long-term care facility or an
18 in-home services client has been abused or neglected may report such information to the
19 department.

20 3. Any person required in subsection 1 of this section to report or cause a report
21 to be made to the department who knowingly fails to make a report within twenty-four
22 hours as required in this section is guilty of a class A misdemeanor.

23 4. Every person who has been previously convicted of or pled guilty to making a
24 false report to the department and who is subsequently convicted of making a false report
25 pursuant to this section is guilty of a class D felony.

26 5. Anyone, except any person who has abused or neglected a resident in a long-term
27 care facility, an individual residing in their home or residence, or an in-home services
28 client, who makes a report pursuant to this section or who testifies in any administrative
29 or judicial proceeding arising from the report shall be immune from any civil or criminal
30 liability for making such a report or for testifying except for liability for perjury, unless
31 such person acted negligently, recklessly, in bad faith, or with malicious purpose. Any
32 person who purposely files a false report of elder abuse or neglect pursuant to this section
33 or section 187.030 is guilty of a class A misdemeanor.

34 6. Evidence of prior convictions of false reporting shall be heard by the court, out
35 of the hearing of the jury, prior to the submission of the case to the jury, and the court
36 shall determine the existence of the prior convictions.

37 7. The administrator of a facility shall contact the local coroner immediately upon
38 the death of any resident of the facility and provide the coroner with an outline of the
39 circumstances regarding the death of such resident. A written report containing the
40 information provided to the local coroner shall be submitted to the department within one
41 business day of the death of the resident. The department shall maintain statistics on all
42 such reports.

187.024. 1. If a report made pursuant to section 187.020 involves a resident of a
2 long-term care facility, the report shall contain, if known, the name and address of the
3 facility, the name of the resident, information regarding the nature of the abuse or neglect,
4 the name of the complainant and any other information which might be helpful in an
5 investigation.

6 2. Upon receipt of a report pursuant to section 187.020 involving a resident of a
7 long-term care facility, the department shall initiate an investigation within twenty-four
8 hours and, as soon as possible during the course of the investigation, shall notify the
9 resident's next of kin or responsible party of the report and the investigation and further
10 notify them whether the report was substantiated or unsubstantiated unless such resident's

11 next of kin is the alleged perpetrator of the abuse or neglect. For reports involving
12 imminent harm, the department shall commence an on-site investigation within twenty-
13 four hours. As provided in section 187.030, suspected reports of elder abuse shall be
14 promptly reported by the department to the appropriate law enforcement agency.

15 3. If the investigation indicates possible abuse or neglect of a resident, the
16 investigator shall refer the complaint together with the investigator's report to the
17 department director or the director's designee for appropriate action. If, during the
18 investigation or at its completion, the department has reasonable cause to believe that
19 immediate removal is necessary to protect the resident from abuse or neglect, the
20 department or the local prosecuting attorney may, or the attorney general upon request
21 of the department shall, file a petition for temporary care and protection of the resident
22 in a circuit court of competent jurisdiction. The circuit court in which the petition is filed
23 shall have equitable jurisdiction to issue an ex parte order granting the department
24 authority for the temporary care and protection of the resident for a period not to exceed
25 thirty days.

26 4. Reports shall be confidential except pursuant to lawful subpoena, as provided
27 in section 187.087, provided that:

28 (1) When deemed by the department to be in the best interest of the resident, the
29 department may inform the resident's designee, any next of kin of the resident, any person
30 with durable power of attorney for the resident, and any person with legal guardianship
31 for the resident that a report of abuse or neglect has been received by the department
32 pursuant to section 187.020 and an investigation has been initiated. If notified, the
33 department shall ask such designee, next of kin, person with durable power of attorney,
34 and person with legal guardianship whether he or she wishes to receive the investigation
35 report of the department regarding the allegations of abuse or neglect of the resident;

36 (2) If the resident's designee, any next of kin of the resident, any person with
37 durable power of attorney for the resident, or any person who has legal guardianship for
38 the resident requests receipt of the investigation report pursuant to subdivision (1) of this
39 subsection, the department shall, within a reasonable time, provide such report to such
40 persons unless for good cause the department determines the release of such report not to
41 be in the best interest of the resident; and

42 (3) Such information shall not be reported to any person pursuant to subdivisions
43 (1) and (2) of this subsection if such person is the alleged perpetrator of the abuse or
44 neglect, or if the resident objects.

45 5. Within five working days after a report required to be made pursuant to this
46 section is received, the person making the report shall be notified orally or in writing of its

47 receipt and of the initiation of the investigation.

48 6. No person who directs or exercises any authority in a facility shall evict, harass,
49 dismiss, or retaliate against a resident or employee because such resident or employee or
50 any member of such resident's or employee's family has made a report of any violation or
51 suspected violation of laws, ordinances or regulations applying to the facility which the
52 resident, the resident's family or an employee has reasonable cause to believe has been
53 committed or has occurred. Through the existing department information and referral
54 telephone contact line, residents, their families, and employees of a facility shall be able to
55 obtain information about their rights, protections and options in cases of eviction,
56 harassment, dismissal or retaliation due to a report being made pursuant to this section.

57 7. Any person who knowingly abuses or neglects a resident of a facility shall be
58 guilty of a class D felony.

59 8. The department shall maintain the employee disqualification list and place on
60 the employee disqualification list the names of any persons who have been finally
61 determined by the department pursuant to section 187.080 to have recklessly, knowingly,
62 or purposely abused or neglected a resident, including persons employed in any facility.

63 9. The timely self-reporting of incidents to the central registry by a facility shall
64 continue to be investigated in accordance with department policy, and shall not be counted
65 or reported by the department as a hot line call but rather a self-reported incident. If the
66 self-reported incident results in a regulatory violation, such incident shall be reported as
67 a substantiated report.

 187.028. 1. If a report is made pursuant to section 187.020 that involves an eligible
2 adult not residing in a facility, the report shall contain, if known, the names and addresses
3 of the eligible adult, information regarding the nature of the abuse or neglect, the name of
4 the complainant, and any other information which may be helpful in an investigation. In
5 addition, if a report made pursuant to section 187.020 involves an eligible adult who is also
6 an in-home services client, the report shall also contain the names and addresses of the in-
7 home services provider agency and the in-home services employee.

8 2. Upon receipt of a report pursuant to section 187.020 involving the eligible adult
9 not residing in a facility, the department shall initiate a prompt and thorough investigation.

10 3. If the investigation indicates possible abuse or neglect of the eligible adult not
11 residing in a facility, the investigator shall refer the complaint together with the
12 investigator's report to the department director or the director's designee for appropriate
13 action. If, during the investigation or at its completion, the department has reasonable
14 cause to believe that immediate removal is necessary to protect the eligible adult not
15 residing in a facility from abuse or neglect, the department or the local prosecuting

16 attorney may, or the attorney general upon request of the department shall, file a petition
17 for temporary care and protection of the eligible adult not residing in a facility in a circuit
18 court of competent jurisdiction. The circuit court in which the petition is filed shall have
19 equitable jurisdiction to issue an ex parte order granting the department authority for the
20 temporary care and protection of an eligible adult not residing in a facility, for a period not
21 to exceed thirty days.

22 4. Reports shall be confidential except pursuant to lawful subpoena, as provided
23 in section 187.087, provided that:

24 (1) When deemed by the department to be in the best interest of the eligible adult,
25 the department may inform the eligible adult's designee, any next of kin of the eligible
26 adult, any person with durable power of attorney for the eligible adult, and any person
27 with legal guardianship for the eligible adult that a report of abuse or neglect has been
28 received by the department pursuant to section 187.020 and an investigation has been
29 initiated. If notified, the department shall ask such designee, next of kin, person with
30 durable power of attorney, and person with legal guardianship whether he or she wishes
31 to receive the investigation report of the department regarding the allegations of abuse or
32 neglect of the eligible adult not residing in a facility;

33 (2) If the eligible adult's designee, any next of kin of the eligible adult, any person
34 with durable power of attorney for the eligible adult, or any person who has legal
35 guardianship for the eligible adult requests receipt of the investigation report pursuant to
36 subdivision (1) of this subsection, the department shall, within a reasonable time, provide
37 such report to such persons unless for good cause the department determines the release
38 of the report is not in the best interest of the eligible adult; and

39 (3) Such information shall not be reported to any person pursuant to subdivisions
40 (1) and (2) of this subsection if such person is the alleged perpetrator of the abuse or
41 neglect.

42 5. Within five working days after a report required to be made pursuant to this
43 section is received, the person making the report shall be notified orally or in writing of its
44 receipt and of the initiation of the investigation.

45 6. No person, including any person who directs or exercises any authority in an in-
46 home services provider agency, shall harass, dismiss, or retaliate against an eligible adult
47 not residing in a facility or an in-home services employee because the eligible adult,
48 employee, or any member of his or her family has made a report of any violation or
49 suspected violation of laws, standards, or regulations applying to the in-home services
50 provider agency or any in-home services employee which the eligible adult, employee, or
51 family member thereof has reasonable cause to believe has been committed or has

52 occurred.

53 7. Any person who knowingly abuses or neglects an eligible adult not residing in
54 a facility shall be guilty of a class D felony.

55 8. The department shall maintain the employee disqualification list and place on
56 the employee disqualification list the names of any persons who have been finally
57 determined by the department pursuant to section 187.080 to have recklessly, knowingly,
58 or purposely abused or neglected an eligible adult not residing in a facility, including
59 persons employed by an in-home services provider agency.

187.030. 1. The department shall investigate incidents and reports of elder abuse
2 and neglect using the procedures established in sections 660.250 to 660.295, RSMo, and
3 shall promptly refer all suspected cases of elder abuse to the appropriate law enforcement
4 agency and shall determine whether protective services are required pursuant to sections
5 660.250 to 660.295, RSMo.

6 2. The department and law enforcement agencies shall require training and cross-
7 training of all investigatory personnel and other persons as deemed necessary regarding
8 the proper handling of cases involving elder abuse. All noninvestigatory personnel and
9 volunteers for local area agencies on aging shall be instructed on certain aspects of elder
10 abuse, identification, and reporting procedures to ensure that such personnel and
11 volunteers are able to recognize potential cases of abuse or neglect and take the necessary
12 steps to properly report elder abuse or neglect cases, including instruction related to the
13 preservation of evidence. Nothing in this subsection shall be construed to require
14 noninvestigatory personnel and volunteers to act in an investigatory capacity in
15 investigations of elder abuse or neglect. The department, in cooperation with law
16 enforcement agencies, shall, by rule, develop a checklist for department and law
17 enforcement personnel to follow when investigating possible elder abuse.

18 3. No rule or portion of a rule promulgated under the authority of this section shall
19 become effective unless it has been promulgated pursuant to chapter 536, RSMo.

187.034. Any person, official, or institution complying with the provisions of section
2 187.020 in the making of a report or in cooperating with the department in any of its
3 activities pursuant to sections 187.020 to 187.050, except any person, official, or institution
4 violating section 565.180, 565.182 or 565.184, RSMo, shall be immune from any civil or
5 criminal liability for making such a report or in cooperating with the department, unless
6 such person acted negligently, recklessly, in bad faith or with malicious purpose.

187.040. Any person while employed by a provider licensed pursuant to chapter
2 190 or 197, RSMo, is finally determined to have recklessly, knowingly, or purposely
3 abused, neglected, or financially exploited a person sixty years of age or older or an eligible

4 adult shall be placed on the department's employee disqualification list.

187.050. 1. Any person having reasonable cause to believe that a misappropriation
2 of property or funds of an eligible adult not residing in a facility or the falsification of any
3 documents verifying in-home service delivery to such eligible adult has occurred shall
4 report such information to the department.

5 2. For each report the department shall attempt to obtain the names and addresses
6 of the in-home services provider agency, the in-home services employee, the in-home
7 services client, the eligible adult not residing in a facility, information regarding the nature
8 of the misappropriation or falsification, the name of the complainant, and any other
9 information which may be helpful in an investigation.

10 3. Any in-home services provider agency or in-home services employee, or any
11 person who puts to his or her own use or the use of the in-home services provider agency,
12 or otherwise diverts any personal property or funds from an eligible adult not residing in
13 a facility, or falsifies any documents for service delivery to an eligible adult not residing in
14 a facility is guilty of a class A misdemeanor.

15 4. Upon receipt of a report, the department shall immediately initiate an
16 investigation and report information to appropriate law enforcement agencies.

17 5. If the investigation indicates probable misappropriation of property or funds or
18 falsification of any documents for service delivery of an eligible adult not residing in a
19 facility, the investigator shall refer the complaint together with the investigator's report to
20 the department director or the director's designee for appropriate action.

21 6. Reports shall be confidential except pursuant to lawful subpoena, as provided
22 in section 187.087, provided that:

23 (1) When deemed by the department to be in the best interest of the eligible adult,
24 the department may inform the eligible adult's designee, any next of kin of the eligible
25 adult, any person with durable power of attorney for the eligible adult, and any person
26 with legal guardianship for the eligible adult that a report of misappropriation of property
27 or funds of the eligible adult has been received by the department pursuant to this section
28 and an investigation has been initiated. If notified, the department shall ask such designee,
29 next of kin, person with durable power of attorney, and person with legal guardianship
30 whether he or she wishes to receive the investigation report of the department regarding
31 the allegations of misappropriation of property or funds of the eligible adult not residing
32 in a facility;

33 (2) If the eligible adult's designee, any next of kin of the eligible adult, any person
34 with durable power of attorney for the eligible adult, or any person who has legal
35 guardianship for the eligible adult requests receipt of the investigation report pursuant to

36 subdivision (1) of this subsection, the department shall, within a reasonable time, provide
37 such report to such persons unless for good cause the department determines the release
38 of the report not to be in the best interest of the eligible adult; and

39 (3) Such information shall not be reported to any person pursuant to subdivisions
40 (1) and (2) of this subsection if such person is the alleged perpetrator of the
41 misappropriation or falsification, or if the eligible adult not residing in a facility objects.

42 7. Anyone, except any person participating in or benefiting from the
43 misappropriation of funds, who makes a report pursuant to this section or who testifies in
44 any administrative or judicial proceeding arising from the report shall be immune from
45 any civil or criminal liability for making such a report or for testifying except for liability
46 for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious
47 purpose.

48 8. Within five working days after a report required to be made pursuant to this
49 section is received, the person making the report shall be notified orally or in writing of its
50 receipt and of the initiation of the investigation.

51 9. No person shall harass, dismiss, or retaliate against an eligible adult not residing
52 in a facility or an in-home services employee because the eligible adult, employee, or any
53 member of his or her family has made a report of any violation or suspected violation of
54 laws, standards, or regulations applying to the in-home services provider agency or any in-
55 home services employee which the eligible adult, employee, or family member thereof has
56 reasonable cause to believe has been committed or has occurred.

57 10. The department shall maintain the employee disqualification list and place on
58 the employee disqualification list the names of any persons who have been finally
59 determined by the department to, pursuant to section 187.080, have misappropriated any
60 property or funds or falsified any documents for service delivery of an eligible adult not
61 residing in a facility, including persons employed by an in-home services provider agency.

187.080. 1. After an investigation and a determination has been made to place a
2 person's name on the employee disqualification list, such person shall be notified in writing
3 mailed to the person's last known address that:

4 (1) An allegation has been made against the person, the substance of the allegation
5 and that an investigation has been conducted which tends to substantiate the allegation;

6 (2) The person's name will be included in the employee disqualification list of the
7 department;

8 (3) The consequences of being so listed including the length of time to be listed; and

9 (4) The person's rights and the procedure to challenge the allegation.

10 2. If no reply has been received within thirty days of mailing the notice, the

11 department may include the name of such person on its list. The length of time the
12 person's name shall appear on the employee disqualification list shall be determined by the
13 director or the director's designee, based upon the criteria contained in subsections 9 and
14 10 of this section.

15 3. If the person so notified wishes to challenge the allegation, he or she may file an
16 application for a hearing with the department. The department shall grant the application
17 within thirty days after receipt by the department and set the matter for hearing, or the
18 department shall notify the applicant that, after review, the allegation has been held to be
19 unfounded and the applicant's name will not be listed.

20 4. If a person's name is included on the employee disqualification list without notice
21 by the department, such person may file a request with the department for removal of the
22 name or for a hearing. Within thirty days after receipt of the request, the department shall
23 either remove the name from the list or grant a hearing and set a date for hearing.

24 5. Any hearing shall be conducted in the county of the person's residence by the
25 director of the department or the director's designee. For a contested case except those
26 provisions or amendments which are in conflict with this section, the provisions of chapter
27 536, RSMo, shall apply to and govern the proceedings contained in this section and the
28 rights and duties of the parties involved. The person appealing such an action shall be
29 entitled to present evidence pursuant to the provisions of chapter 536, RSMo, relevant to
30 the allegations.

31 6. Upon the record made at the hearing, the director of the department or the
32 director's designee shall determine all questions presented and shall determine whether the
33 person shall be listed on the employee disqualification list. The director shall clearly state
34 the reasons for his or her decision and shall include a statement of findings of fact and
35 conclusions of law pertinent to the questions in issue.

36 7. A person aggrieved by the decision following the hearing shall be informed of his
37 or her right to seek judicial review as provided in chapter 536, RSMo. If the person fails
38 to appeal the director's findings, those findings shall constitute a final determination that
39 the person shall be placed on the employee disqualification list.

40 8. A decision by the director shall be inadmissible in any civil action brought
41 against a facility or the in-home services provider agency and arising out of the facts and
42 circumstances which brought about the employment disqualification proceeding, unless
43 the civil action is brought against the facility or the in-home services provider agency by
44 the department or one of its divisions, or production is required by lawful subpoena.

45 9. The following persons shall receive an automatic lifetime listing on the employee
46 disqualification list:

47 (1) Any person who has, within the past ten years, been convicted of, pled guilty to
48 or nolo contendere to any felony stealing offense or any felony offense in chapter 187, 198,
49 334, 565, 566, 568, 573, or 660, RSMo, or section 570.145, RSMo;

50 (2) Based on substantiated reports:

51 (a) Any person who intentionally or negligently inflicts serious physical injury or
52 causes the death of another person; or

53 (b) Any person who intentionally inflicts physical injury on another person.

54 10. Except as provided in subsection 9 of this section, the length of time the person's
55 name shall appear on the employee disqualification list shall be determined by the director
56 or the director's designee, based upon the following:

57 (1) Whether the person acted recklessly, knowingly, or purposely, as defined in
58 chapter 562, RSMo;

59 (2) The degree of physical, sexual, or emotional injury or harm caused to a resident
60 or eligible adult not residing in a facility; or the degree of the imminent danger to the
61 health, safety, or welfare of a resident or eligible adult not residing in a facility;

62 (3) The degree of misappropriation of the property or funds or falsification of any
63 documents for service delivery of an in-home services client;

64 (4) Whether the person has previously been listed on the employee disqualification
65 list;

66 (5) Any mitigating circumstances;

67 (6) Any aggravating circumstances; and

68 (7) Whether alternative sanctions resulting in conditions of continued employment
69 are appropriate in lieu of placing a person's name on the employee disqualification list.
70 Such conditions of employment may include, but are not limited to, additional training and
71 employee counseling. Conditional employment shall terminate upon the expiration of the
72 designated length of time and the person's submitting documentation which fulfills the
73 department's requirements.

74 11. The removal of any person's name from the list pursuant to this section shall
75 not prevent the director from keeping records of all acts finally determined to have
76 occurred pursuant to this section.

77 12. The department shall provide the list maintained pursuant to this section to
78 other state departments upon request and to every local area agency on aging, or any
79 person, corporation, or association who:

80 (1) Is licensed as an operator pursuant to chapter 198, RSMo;

81 (2) Provides in-home services under contract with the department of health and
82 senior services or the department of social services;

83 **(3) Employs nurses and nursing assistants for temporary or intermittent placement**
84 **in health care facilities;**

85 **(4) Is approved by the department of health and senior services to issue certificates**
86 **for nursing assistants training;**

87 **(5) Is an entity licensed pursuant to chapter 197, RSMo. The department shall**
88 **inform any person listed above who inquires of the department whether a particular name**
89 **is on the list. The department may require that the request be made in writing; or**

90 **(6) Is an entity licensed pursuant to chapter 190, RSMo.**

91 **13. No person, corporation, or association responsible for providing health care**
92 **service shall knowingly employ any person who is on the employee disqualification list.**
93 **Any such person, corporation, or association, who declines to employ or terminates a**
94 **person whose name is listed in this section shall be immune from suit by that person or**
95 **anyone else acting for or in behalf of that person for the failure to employ or for the**
96 **termination of the person whose name is listed on the employee disqualification list.**

97 **14. Any employer who is required to discharge an employee because the employee**
98 **was placed on a disqualification list maintained by the department after the date of hire**
99 **shall not be charged for unemployment insurance benefits based on wages paid to the**
100 **employee for work prior to the date of discharge, pursuant to section 288.100, RSMo.**

101 **15. Any person who has been listed on the employee disqualification list, other than**
102 **a person who has a lifetime listing, may request that the director remove his or her name**
103 **from the employee disqualification list. The request shall be in writing and may not be**
104 **made more than once every twelve months. The request will be granted by the director**
105 **upon a clear showing, by written submission only, that the person will not commit**
106 **additional acts of abuse, neglect, misappropriation of the property or funds, or the**
107 **falsification of any documents of service delivery to an eligible adult not residing in a**
108 **facility. The director or the director's designee may make conditional the removal of a**
109 **person's name from the list on any terms that the director or the director's designee deems**
110 **appropriate and failure to comply with such terms may result in the person's name being**
111 **relisted. The director's or designee's determination of whether to remove the person's**
112 **name from the list is not subject to appeal.**

187.084. 1. For the purposes of this section, the term "provider" means any person,
2 **corporation, or association who:**

3 **(1) Is licensed as an operator pursuant to chapter 198, RSMo;**

4 **(2) Provides in-home services under contract with the department of health and**
5 **senior services or the department of social services;**

6 **(3) Employs nurses or nursing assistants for temporary or intermittent placement**

7 in health care facilities;

8 (4) Is an entity licensed pursuant to chapter 197, RSMo;

9 (5) Is a public or private facility, day program, residential facility, or specialized
10 service operated, funded, or licensed by the department of mental health;

11 (6) Is an entity licensed pursuant to chapter 190, RSMo; or

12 (7) Employs persons who provide personal care assistance services. For purposes
13 of this subdivision, "provider" does not include the individual receiving personal care
14 assistance or any member of such individual's immediate family.

15 2. For the purpose of this section "patient or resident" has the same meaning as
16 such term is defined in section 43.540, RSMo.

17 3. Prior to hiring any person for a full-time, part-time, or temporary position who
18 has contact with any patient or resident the provider shall, or in the case of temporary
19 employees hired through an employment agency, the employment agency shall, prior to
20 sending a temporary employee to a provider:

21 (1) Request a criminal background check as provided in section 43.540, RSMo.
22 Completion of an inquiry to the highway patrol for criminal records that are available for
23 disclosure to a provider for the purpose of conducting an employee criminal records
24 background check shall be deemed to fulfill the provider's duty to conduct employee
25 criminal background checks pursuant to this section; except that, completing the inquiries
26 pursuant to this subsection shall not be construed to exempt a provider from further
27 inquiry pursuant to common law requirements governing due diligence; and

28 (2) Make an inquiry to the department, whether the person is listed on the
29 employee disqualification list as provided in section 187.080.

30 4. When the provider requests a criminal background check pursuant to section
31 43.540, RSMo, the requesting entity may require that the applicant reimburse the provider
32 for the cost of such record check.

33 5. An applicant for a position to have contact with patients or residents of a
34 provider shall:

35 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may
36 request a criminal records review;

37 (2) Disclose the applicant's criminal history. For purposes of this subdivision
38 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony
39 charge and shall include any suspended imposition of sentence, any suspended execution
40 of sentence, or any period of probation or parole; and

41 (3) Disclose if the applicant is listed on the employee disqualification list as
42 provided in section 187.080.

43 **6. An applicant who knowingly fails to disclose his or her criminal history as**
44 **required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is**
45 **guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have**
46 **contact with patients or residents and the person has been convicted of, pled guilty to, or**
47 **nolo contendere in this state or any other state or has been found guilty of a crime, which**
48 **if committed in Missouri would be a felony stealing offense, child abuse or neglect, a felony**
49 **violation of chapter 198, 334, 565, 566, 568, 569 or 573, RSMo, a violation of section**
50 **565.184, RSMo, or any violation of subsection 3 of section 187.020 or section 568.020,**
51 **RSMo, or the person or the person's foster care license has been refused, suspended, or**
52 **revoked pursuant to section 210.496, RSMo, if such refusal, suspension or revocation is**
53 **related to care or protection of children, or the person is disqualified for employment by**
54 **the department of mental health pursuant to section 630.170, RSMo.**

55 **7. The department shall promulgate rules to waive the hiring restrictions pursuant**
56 **to this section for good cause. For purposes of this section, "good cause" means the**
57 **department has made a determination by examining the employee's prior work history and**
58 **other relevant factors that such employee does not present a risk to the health or safety of**
59 **residents.**

60 **8. Any provider that demonstrates a pattern of violation of this section shall be**
61 **subject to the civil penalties established in section 197.455 or 198.067, RSMo, regardless**
62 **of whether such violations have been or are being corrected.**

187.087. 1. Reports confidential pursuant to this section, sections 187.020 to
2 **187.034 and sections 187.050 and 187.080 shall not be deemed a public record and shall not**
3 **be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name**
4 **of the complainant or any person mentioned in the reports shall not be disclosed unless:**

5 **(1) The complainant, resident, or the eligible adult not residing in a facility**
6 **mentioned agrees to disclosure of his or her name;**

7 **(2) The department determines that disclosure is necessary to prevent further**
8 **abuse, neglect, misappropriation of property or funds, or falsification of any documents**
9 **verifying service delivery to an eligible adult not residing in a facility;**

10 **(3) Release of a name is required for conformance with a lawful subpoena;**

11 **(4) Release of a name is required in connection with a review by the administrative**
12 **hearing commission in accordance with section 198.039, RSMo;**

13 **(5) The department determines that release of a name is appropriate when**
14 **forwarding a report of findings of an investigation to a licensing authority; or**

15 **(6) Release of a name is requested by the division of family services within the**
16 **department of social services for the purpose of licensure pursuant to chapter 210, RSMo.**

17 **2. The department shall, upon request, provide to the division of employment**
18 **security within the department of labor and industrial relations copies of the investigative**
19 **reports that led to an employee being placed on the disqualification list; except that copies**
20 **of such reports shall not identify the reporter or the eligible adult referenced in the report.**

187.090. 1. The director or any person designated by the director, may administer
2 **oaths and affirmations, subpoena witnesses, compel their attendance, take testimony,**
3 **require answers to written interrogatories, and require production of any books, papers,**
4 **correspondence, memoranda, agreements, or other documents or records which the**
5 **director deems relevant and material to any inspection or investigation. In the case of**
6 **contumacy by or refusal to obey a subpoena issued to any person, the circuit court of any**
7 **county of the state or the city of St. Louis, upon application by the director or the director's**
8 **designee may issue to the person an order requiring such person to appear before the**
9 **department director, or the director's designee, there to produce documentary evidence if**
10 **so ordered or to give testimony or evidence if so ordered or to answer interrogatories**
11 **touching upon the matter under investigation or in questions in accordance with the forms**
12 **and procedures otherwise authorized by the Rules of Civil Procedure. The court may**
13 **make any order which justice requires to protect any person from undue annoyance,**
14 **embarrassment, expense, or oppression. Failure to obey the order of the court may be**
15 **punished by the court as a contempt of court.**

16 **2. Failure to comply with any lawful request of the department in connection with**
17 **the investigation and inspection is a ground for refusal to issue a license or contract, or for**
18 **the suspension or revocation of a license or contract.**

187.100. 1. By July 1, 2003, the department shall establish a telephone check-in
2 **pilot project in one area of the state to be designated by the department. Such pilot project**
3 **shall require that a telephone check-in system be established for in-home services**
4 **employees, as defined in section 660.250, RSMo, to accurately document the actual time**
5 **that such employees spend in clients' homes by requiring such employees to clock in and**
6 **out of the client's home by telephone. Such system shall also require in-home services**
7 **employees to thoroughly document the specific services delivered to clients.**

8 **2. The department may promulgate rules to implement the provisions of this**
9 **section. No rule or portion of a rule promulgated under the authority of this section shall**
10 **become effective unless it has been promulgated pursuant to chapter 536, RSMo.**

187.102. Pursuant to sections 187.010 to 187.102, the department of health and
2 **senior services and the department of mental health shall work cooperatively in the**
3 **investigation of abuse and neglect, when appropriate.**

191.900. As used in sections 191.900 to 191.910, the following terms mean:

2 (1) "Abuse", the infliction of physical, sexual or emotional harm or injury. "Abuse"
3 includes the taking, obtaining, using, transferring, concealing, appropriating or taking possession
4 of property of another person without such person's consent;

5 (2) "Claim", any attempt to cause a health care payer to make a health care payment;

6 (3) "False", wholly or partially untrue. A false statement or false representation of a
7 material fact means the failure to reveal material facts in a manner which is intended to deceive
8 a health care payer with respect to a claim;

9 (4) "Health care", any service, assistance, care, product, device or thing provided
10 pursuant to a medical assistance program, or for which payment is requested or received, in
11 whole or part, pursuant to a medical assistance program;

12 (5) "Health care payer", a medical assistance program, or any person reviewing,
13 adjusting, approving or otherwise handling claims for health care on behalf of or in connection
14 with a medical assistance program;

15 (6) "Health care payment", a payment made, or the right under a medical assistance
16 program to have a payment made, by a health care payer for a health care service;

17 (7) "Health care provider", any person delivering, or purporting to deliver, any health
18 care, and including any employee, agent or other representative of such a person;

19 (8) "Medical assistance program", [any program to provide or finance health care to
20 recipients which is established pursuant to title 42 of the United States Code, any successor
21 federal health insurance program, or a waiver granted thereunder. A medical assistance program
22 may be funded either solely by state funds or by state and federal funds jointly] **any federal**
23 **health care program, as defined in 42 U.S.C. Section 1320a-7b(f).** The term "medical
24 assistance program" shall include the medical assistance program provided by section 208.151,
25 RSMo, et seq., and any state agency or agencies administering all or any part of such a program;

26 (9) "Person", a natural person, corporation, partnership, association or any legal entity.

191.910. 1. The attorney general shall have authority to investigate alleged or suspected
2 violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to**
3 **a violation of sections 191.900 to 191.910** and shall have all powers provided by sections
4 407.040 to 407.090, RSMo, in connection with investigations of alleged or suspected violations
5 of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation**
6 **of sections 191.900 to 191.910** as if the acts enumerated in subsections 1 to 3 of section 191.905
7 are unlawful acts proscribed by chapter 407, RSMo, provided that if the attorney general
8 exercises such powers, the provisions of section 407.070, RSMo, shall also be applicable; **and**
9 **may exercise all of the powers provided by sections 542.271 to 542.296, RSMo, in**
10 **connection with investigations of alleged or suspected violations of sections 191.900 to**
11 **191.910 or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900**

12 **to 191.910;** and may exercise all of the powers provided by subsections 1 and 2 of section
13 578.387, RSMo, in connection with investigations of alleged or suspected violations of sections
14 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section 191.905 involve
15 "public assistance" as defined by section 578.375, RSMo. The attorney general and [his] **the**
16 **attorney general's** authorized investigators shall be authorized to serve all subpoenas, **including**
17 **investigative subpoenas,** and civil process related to the enforcement of sections 191.900 to
18 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900**
19 **to 191.910** and chapter 407, RSMo. [In order for the attorney general to commence a state
20 prosecution] For violations of sections 191.900 to 191.910, the attorney general shall **either**
21 **commence a state prosecution or** prepare and forward a report of the violations to the
22 appropriate prosecuting attorney. Upon receiving a referral, the prosecuting attorney shall either
23 commence a prosecution based on the report by the filing of a complaint, information, or
24 indictment within sixty days of receipt of said report or shall file a written statement with the
25 attorney general explaining why criminal charges should not be brought. [This time period may
26 be extended by the prosecuting attorney with the agreement of the attorney general for an
27 additional sixty days.] If the prosecuting attorney commences a criminal prosecution, the
28 attorney general or [his] **the attorney general's** designee shall be permitted by the court to
29 participate as a special assistant prosecuting attorney in settlement negotiations and all court
30 proceedings, subject to the authority of the prosecuting attorney, for the purpose of providing
31 such assistance as may be necessary. If the prosecuting attorney fails to commence a prosecution
32 and fails to file a written statement listing the reasons why criminal charges should not be
33 brought within the appropriate time period, or declines to prosecute on the basis of inadequate
34 office resources, the attorney general [shall have authority to] **may** commence prosecutions for
35 violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to**
36 **a violation of sections 191.900 to 191.910.** In cases where a defendant pursuant to a common
37 scheme or plan has committed acts which constitute or would constitute violations of sections
38 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections**
39 **191.900 to 191.910** in more than one state, the attorney general shall have the authority to
40 represent the state of Missouri in any plea agreement which resolves all criminal prosecutions
41 within and without the state, and such agreement shall be binding on all state prosecutors.

42 2. In any investigation, hearing or other proceeding pursuant to sections 191.900 to
43 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900**
44 **to 191.910** any record in the possession or control of a health care provider, or in the possession
45 or control of another person on behalf of a health care provider, including but not limited to any
46 record relating to patient care, business or accounting records, payroll records and tax records,
47 whether written or in an electronic format, shall be made available by the health care provider

48 to the attorney general or the court, and shall be admissible into evidence, regardless of any
49 statutory or common law privilege which such health care provider, record custodian or patient
50 might otherwise invoke or assert. The provisions of section 326.151, RSMo, shall not apply to
51 actions brought pursuant to sections 191.900 to 191.910. The attorney general shall not disclose
52 any record obtained pursuant to this section, other than in connection with a proceeding instituted
53 or pending in any court or administrative agency. The access, provision, use, and disclosure of
54 records or material subject to the provisions of 42 U.S.C. section 290dd-2 shall be subject to said
55 section, as may be amended from time to time, and to regulations promulgated pursuant to said
56 section.

57 3. Sections 191.900 to 191.910 shall not be construed to prohibit or limit any other
58 criminal or civil action against a health care provider for the violation of any other law. Any
59 complaint, investigation or report received or completed pursuant to sections [198.070 and]
60 **187.020 to 187.028, RSMo, section 198.090, RSMo, subsection 2 of section 205.967, RSMo,**
61 **sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or [sections 660.300 and 660.305]**
62 **section 187.050, RSMo,** which indicates a violation of sections 191.900 to 191.910, shall be
63 referred to the attorney general. A referral to the attorney general pursuant to this subsection
64 shall not preclude the agencies charged with enforcing the foregoing sections from conducting
65 investigations, providing protective services or taking administrative action regarding the
66 complaint, investigation or report referred to the attorney general, as may be provided by such
67 sections; provided that all material developed by the attorney general in the course of an
68 investigation pursuant to sections 191.900 to 191.910 shall not be subject to subpoena,
69 discovery, or other legal or administrative process in the course of any such administrative
70 action. Sections 191.900 to 191.910 take precedence over the provisions of sections [198.070
71 and] **187.020 to 187.028, RSMo, section 198.090, RSMo, subsection 2 of section 205.967,**
72 **RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, and [sections 660.300 and**
73 **660.305] section 187.050, RSMo,** to the extent such provisions are inconsistent or overlap.

197.455. [The department may file an action in the circuit court for the county in which
2 any home health agency alleged to be violating the provisions of sections 197.400 to 197.475
3 resides or may be found for an injunction to restrain the home health agency from continuing the
4 violation.] **1. An action may be brought by the department, or by the attorney general on**
5 **his or her own volition or at the request of the department or any other appropriate state**
6 **agency, to temporarily or permanently enjoin or restrain any violation of sections 197.400**
7 **to 197.477, to enjoin the acceptance of new clients until substantial compliance with**
8 **sections 197.400 to 197.477 is achieved, or to enjoin any specific action or practice of the**
9 **agency. Any action brought pursuant to the provisions of this section shall be placed at the**
10 **head of the docket by the court, and the court shall hold a hearing on any action brought**

11 pursuant to the provisions of this section no less than fifteen days after the filing of the
12 action.

13 2. The department may bring an action in circuit court to recover a civil penalty
14 against the licensed operator of the agency as provided by this section. Such action shall
15 be brought in the circuit court for the county in which the agency is located. The circuit
16 court shall determine the amount of penalty to be assessed within the limits set out in this
17 section. Appeals may be taken from the judgment of the circuit court as in other civil
18 cases.

19 3. The operator of any agency which has been cited with a violation of sections
20 197.400 to 197.475 or the rules promulgated thereto is liable to the state for civil penalties
21 of up to ten thousand dollars for each day that the violations existed or continue to exist.
22 Violations shall be presumed to continue to exist from the time they are found until the
23 time the department finds them to have been corrected. The amount of the penalty shall
24 be determined as follows:

25 (1) For each violation comparable to a violation of a class I standard for a long-
26 term care facility, not less than one hundred fifty dollars nor more than one thousand
27 dollars;

28 (2) For each violation comparable to a violation of a class II standard for a long-
29 term care facility, not less than fifty dollars nor more than five hundred dollars;

30 (3) For each violation comparable to a violation of a class III standard for a long-
31 term care facility, not less than fifteen dollars nor more than one hundred fifty dollars;

32 (4) For each violation of a federal standard which does not also constitute a
33 violation of a state law or regulation, not less than two hundred fifty dollars nor more than
34 five hundred dollars;

35 (5) For each specific violation in subdivision (1) of this subsection by the same
36 operator which has been cited within the past twenty-four months and for each specific
37 violation in subdivision (2) or (3) of this subsection by the same operator which has been
38 cited within the past twelve months, double the amount last imposed.

39

40 As used in this subsection the term "violation" shall mean a breach of a specific state or
41 federal standard or statute which remains uncorrected and not in accord with the accepted
42 plan of correction at the time of any reinspection. A judgment rendered against the
43 operator of a agency pursuant to this subsection shall bear interest as provided in
44 subsection 1 of section 408.040, RSMo.

45 4. Any individual who willfully and knowingly makes a material and false
46 statement in a client assessment pursuant to subsection (c)(2) of Section 1396t of Title 42

47 of the United States Code is subject to a civil penalty of not more than one thousand dollars
48 with respect to each assessment. Any individual who willfully and knowingly causes
49 another individual to make a material and false statement in a client assessment pursuant
50 to subsection (c)(2) of Section 1396t of Title 42 of the United States Code is subject to a civil
51 penalty of not more than five thousand dollars with respect to each assessment.

52 5. The imposition of any remedy provided for in sections 197.400 to 197.477 shall
53 not bar the imposition of any other remedy.

54 6. Penalties collected pursuant to this section shall be deposited in the department's
55 elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such
56 penalties shall not be considered a charitable contribution for tax purposes.

57 7. To recover any civil penalty, the moving party shall prove by clear and
58 convincing evidence that the violation occurred.

59 8. The licensed operator of an agency against whom an action to recover civil
60 penalty is brought pursuant to this section may confess judgment as provided in section
61 511.070, RSMo, at any time prior to hearing. If such licensed operator agrees to confess
62 judgment, the amount of the civil penalty recommended by the moving party in its petition
63 shall be reduced by twenty-five percent and the confessed judgment shall be entered by the
64 circuit court at the reduced amount.

65 9. The amount of any civil penalty assessed by the circuit court pursuant to this
66 section shall be reduced by the amount of any civil monetary penalty which the licensed
67 operator of the agency may establish it has paid pursuant to the laws of the United States
68 for the breach of the same federal standards for which the state action is brought.

69 10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of
70 this section, any agency which is cited with a violation in subdivision (1) of subsection 3 of
71 this section when such violation results in serious physical injury or abuse of a sexual
72 nature to any client of that agency shall be liable to the state for a civil penalty of not less
73 than one hundred dollars or more than ten thousand dollars. The liability of the agency
74 for civil penalties pursuant to this section shall be incurred immediately upon the citation
75 of the violation and shall not be affected by any subsequent correction of the violation. For
76 the purposes of this section, "serious physical injury" means physical injury that creates
77 a substantial risk of death or that causes serious disfigurement or protracted loss or
78 impairment of the function of any part of the body.

79 11. The civil penalties in this section shall be imposed in cases where there has been
80 more than one violation or a pattern of violations, regardless of any subsequent correction
81 of the violation by the agency.

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates

2 otherwise, the following terms mean:

3 (1) "Abuse", the infliction of physical, sexual, or emotional **harm or injury** [or harm],
4 **the taking, obtaining, using, transferring, concealing, appropriating or taking possession**
5 **of property of another person without such person's consent, or the wasting of financial**
6 **resources**;

7 (2) "Administrator", the person who is in general administrative charge of a facility;

8 (3) "Affiliate":

9 (a) With respect to a partnership, each partner thereof;

10 (b) With respect to a limited partnership, the general partner and each limited partner
11 with an interest of five percent or more in the limited partnership;

12 (c) With respect to a corporation, each person who owns, holds or has the power to vote,
13 five percent or more of any class of securities issued by the corporation, and each officer and
14 director;

15 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

16 (4) "Department", the Missouri department of [social] **health and senior** services;

17 (5) "Emergency", a situation, physical condition or one or more practices, methods or
18 operations which presents imminent danger of death or serious physical or mental harm to
19 residents of a facility;

20 (6) "Facility", any residential care facility I, residential care facility II, immediate care
21 facility, or skilled nursing facility;

22 (7) "Health care provider", any person providing health care services or goods to
23 residents and who receives funds in payment for such goods or services under Medicaid;

24 (8) "Intermediate care facility", any premises, other than a residential care facility I,
25 residential care facility II, or skilled nursing facility, which is utilized by its owner, operator, or
26 manager to provide twenty-four hour accommodation, board, personal care, and basic health and
27 nursing care services under the daily supervision of a licensed nurse and under the direction of
28 a licensed physician to three or more residents dependent for care and supervision and who are
29 not related within the fourth degree of consanguinity or affinity to the owner, operator or
30 manager of the facility;

31 (9) "Manager", any person other than the administrator of a facility who contracts or
32 otherwise agrees with an owner or operator to supervise the general operation of a facility,
33 providing such services as hiring and training personnel, purchasing supplies, keeping financial
34 records, and making reports;

35 (10) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in
36 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42
37 U.S.C. 301 et seq.), as amended;

38 (11) "Neglect", the failure to provide, by those responsible for the care, custody, and
39 control of a resident in a facility, the services which are reasonable and necessary to maintain the
40 physical and mental health of the resident, when such failure presents either an imminent danger
41 to the health, safety or welfare of the resident or a substantial probability that death or serious
42 physical harm would result;

43 (12) "Operator", any person licensed or required to be licensed under the provisions of
44 sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

45 (13) "Owner", any person who owns an interest of five percent or more in:

46 (a) The land on which any facility is located;

47 (b) The structure or structures in which any facility is located;

48 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by
49 the land or structure in or on which a facility is located; or

50 (d) Any lease or sublease of the land or structure in or on which a facility is located.

51 "Owner" does not include a holder of a debenture or bond purchased at public issue nor does it
52 include any regulated lender unless the entity or person directly or through a subsidiary operates
53 a facility;

54 (14) "Resident", a person who by reason of aging, illness, disease, or physical or mental
55 infirmity receives or requires care and services furnished by a facility and who resides or boards
56 in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding
57 twenty-four consecutive hours;

58 (15) "Residential care facility I", any premises, other than a residential care facility II,
59 intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or
60 manager to provide twenty-four hour care to three or more residents, who are not related within
61 the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility
62 and who need or are provided with shelter, board, and with protective oversight, which may
63 include storage and distribution or administration of medications and care during short-term
64 illness or recuperation;

65 (16) "Residential care facility II", any premises, other than a residential care facility I,
66 an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator
67 or manager to provide twenty-four hour accommodation, board, and care to three or more
68 residents who are not related within the fourth degree of consanguinity or affinity to the owner,
69 operator, or manager of the facility, and who need or are provided with supervision of diets,
70 assistance in personal care, storage and distribution or administration of medications, supervision
71 of health care under the direction of a licensed physician, and protective oversight, including care
72 during short-term illness or recuperation;

73 (17) "Skilled nursing facility", any premises, other than a residential care facility I, a

74 residential care facility II, or an intermediate care facility, which is utilized by its owner, operator
75 or manager to provide for twenty-four hour accommodation, board and skilled nursing care and
76 treatment services to at least three residents who are not related within the fourth degree of
77 consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care
78 and treatment services are those services commonly performed by or under the supervision of
79 a registered professional nurse for individuals requiring twenty-four hours a day care by licensed
80 nursing personnel including acts of observation, care and counsel of the aged, ill, injured or
81 infirm, the administration of medications and treatments as prescribed by a licensed physician
82 or dentist, and other nursing functions requiring substantial specialized judgment and skill;

83 (18) "Vendor", any person selling goods or services to a health care provider.

198.012. 1. The provisions of **section 187.020, RSMo, and** sections 198.003 to 198.136
2 shall not apply to any of the following entities:

3 (1) Any hospital, facility or other entity operated by the state or the United States;

4 (2) Any facility or other entity otherwise licensed by the state and operating exclusively
5 under such license and within the limits of such license, unless the activities and services are or
6 are held out as being activities or services normally provided by a licensed facility [under]
7 **pursuant to section 187.010, RSMo, and** sections 198.003 to 198.186, 198.200, 208.030, and
8 208.159, RSMo, except hospitals licensed [under] **pursuant to** the provisions of chapter 197,
9 RSMo;

10 (3) Any hospital licensed [under] **pursuant to** the provisions of chapter 197, RSMo,
11 provided that the residential care facility II, intermediate care facility or skilled nursing facility
12 are physically attached to the acute care hospital; and provided further that the department of
13 health **and senior services** in promulgating rules, regulations and standards pursuant to section
14 197.080, RSMo, with respect to such facilities, shall establish requirements and standards for
15 such hospitals consistent with the intent of this chapter, **section 187.020**, and sections 198.067,
16 [198.070,] 198.090, 198.093 and 198.139 to 198.180 shall apply to every residential care facility
17 II, intermediate care facility or skilled nursing facility regardless of physical proximity to any
18 other health care facility;

19 (4) Any facility licensed pursuant to sections 630.705 to 630.760, RSMo, which provides
20 care, treatment, habilitation and rehabilitation exclusively to persons who have a primary
21 diagnosis of mental disorder, mental illness, mental retardation or developmental disabilities, as
22 defined in section 630.005, RSMo;

23 (5) Any provider of care under a life care contract, except to any portion of the provider's
24 premises on which the provider offers services provided by an intermediate care facility or
25 skilled nursing facility as defined in section 198.006. For the purposes of this section, "provider
26 of care under a life care contract" means any person contracting with any individual to furnish

27 specified care and treatment to the individual for the life of the individual, with significant
28 prepayment for such care and treatment.

29 2. Nothing in this section shall prohibit any of these entities from applying for a license
30 [under] pursuant to sections 198.003 to 198.136.

**198.019. When the department of health and senior services issues a license for or
2 renews the existing license of a facility, the department of health and senior services shall:**

3 **(1) Require all facility operators and owners, including part owners, to include in**
4 **the application for licensure or renewal of licensure a list of all long-term care facilities,**
5 **whether located in this state or another state, for which the operators and owners currently**
6 **have or have had a financial interest, excluding the facility for which licensure or renewal**
7 **of licensure is sought;**

8 **(2) Determine and consider the compliance history of the facilities listed in the**
9 **application pursuant to subdivision (1) of this section as facilities for which the owners and**
10 **operators have or have had a financial interest. The department, based on the review of**
11 **such compliance history, may deny licensure or renewal of licensure for the facility;**

12 **(3) Consider the compliance history of the operator of the facility and the facility**
13 **for which licensure or renewal of licensure is sought. The department, based on the review**
14 **of such compliance history, may deny licensure or renewal of licensure for the facility; and**

15 **(4) Include and consider any facility responses to survey findings in the official**
16 **review made by the department.**

198.022. 1. Upon receipt of an application for a license to operate a facility, the
2 department shall review the application, investigate the applicant and the statements sworn to
3 in the application for license and conduct any necessary inspections. A license shall be issued
4 if the following requirements are met:

5 (1) The statements in the application are true and correct;

6 (2) The facility and the operator are in substantial compliance with the provisions of
7 sections 198.003 to 198.096 and the standards established thereunder;

8 (3) The applicant has the financial capacity to operate the facility;

9 (4) The administrator of a residential care facility II, a skilled nursing facility, or an
10 intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;

11 (5) Neither the operator nor any principals in the operation of the facility have ever been
12 convicted of a felony offense concerning the operation of a long-term health care facility or other
13 health care facility or ever knowingly acted or knowingly failed to perform any duty which
14 materially and adversely affected the health, safety, welfare or property of a resident, while acting
15 in a management capacity. The operator of the facility or any principal in the operation of the
16 facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX

17 (Medicaid) program of any state or territory;

18 (6) Neither the operator nor any principals involved in the operation of the facility have
19 ever been convicted of a felony in any state or federal court arising out of conduct involving
20 either management of a long-term care facility or the provision or receipt of health care;

21 (7) All fees due to the state have been paid.

22 2. Upon denial of any application for a license, the department shall so notify the
23 applicant in writing, setting forth therein the reasons and grounds for denial.

24 3. The department may inspect any facility and any records and may make copies of
25 records, at the facility, at the department's own expense, required to be maintained by sections
26 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a
27 license has been issued to or an application for a license has been filed by the operator of such
28 facility. **Except as otherwise provided for in section 198.526**, the department shall make at
29 least two inspections per year, at least one of which shall be unannounced to the operator. The
30 department may make such other inspections, announced or unannounced, as it deems necessary
31 to carry out the provisions of sections 198.003 to 198.136.

32 4. Whenever the department has reasonable grounds to believe that a facility required
33 to be licensed under sections 198.003 to 198.096 is operating without a license, and the
34 department is not permitted access to inspect the facility, or when a licensed operator refuses to
35 permit access to the department to inspect the facility, the department shall apply to the circuit
36 court of the county in which the premises is located for an order authorizing entry for such
37 inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if
38 it finds that a licensed operator has refused to permit the department access to inspect the facility.

198.026. 1. Whenever a duly authorized representative of the department finds upon an
2 inspection of a facility that it is not in compliance with the provisions of sections 198.003 to
3 198.096 and the standards established thereunder, the operator or administrator shall be informed
4 of the deficiencies in an exit interview conducted with the operator or administrator or his
5 designee. The department shall inform the operator or administrator, in writing, of any violation
6 of a class I standard at the time the determination is made. A written report shall be prepared of
7 any deficiency for which there has not been prompt remedial action, and a copy of such report
8 and a written correction order shall be sent to the operator or administrator by certified mail or
9 other delivery service that provides a dated receipt of delivery at the facility address within ten
10 working days after the inspection, stating separately each deficiency and the specific statute or
11 regulation violated.

12 2. The operator or administrator shall have five working days following receipt of a
13 written report and correction order regarding a violation of a class I standard and ten working
14 days following receipt of the report and correction order regarding violations of class II or class

15 III standards to request any conference and to submit a plan of correction for the department's
16 approval which contains specific dates for achieving compliance. Within five working days after
17 receiving a plan of correction regarding a violation of a class I standard and within ten working
18 days after receiving a plan of correction regarding a violation of a class II or III standard, the
19 department shall give its written approval or rejection of the plan. If there was a violation of any
20 class I standard, immediate corrective action shall be taken by the operator or administrator and
21 a written plan of correction shall be submitted to the department. The department shall give its
22 written approval or rejection of the plan and if the plan is acceptable, a reinspection shall be
23 conducted within twenty calendar days of the exit interview to determine if deficiencies have
24 been corrected. If there was a violation of any class II standard and the plan of correction is
25 acceptable, an unannounced reinspection shall be conducted between forty and ninety calendar
26 days from the date of the exit conference to determine the status of all previously cited
27 deficiencies. If there was a violation of class III standards sufficient to establish that the facility
28 was not in substantial compliance, an unannounced reinspection shall be conducted within one
29 hundred twenty days of the exit interview to determine the status of previously identified
30 deficiencies.

31 **3. For any violation or deficiency resulting in a notice of noncompliance and**
32 **involving staffing issues directly related to patient care, the department may direct a**
33 **facility to implement corrective actions relating to staffing, including but not limited to**
34 **qualifications of staff, staffing ratios, training plans or plans for staff supervision. Such**
35 **decision may be appealed to the administrative hearing commission; except that the**
36 **commission shall not have the authority to stay the effect of the order pending final**
37 **resolution of the case.**

38 **4.** If, following the reinspection, the facility is found not in substantial compliance with
39 sections 198.003 to 198.096 and the standards established thereunder or the operator is not
40 correcting the noncompliance in accordance with the approved plan of correction, the department
41 shall issue a notice of noncompliance, which shall be sent by certified mail or other delivery
42 service that provides a dated receipt of delivery to each person disclosed to be an owner or
43 operator of the facility, according to the most recent information or documents on file with the
44 department.

45 **[4.] 5.** The notice of noncompliance shall inform the operator or administrator that the
46 department may seek the imposition of any of the sanctions and remedies provided for in section
47 198.067, or any other action authorized by law.

48 **[5.] 6.** At any time after an inspection is conducted, the operator may choose to enter into
49 a consent agreement with the department to obtain a probationary license. The consent
50 agreement shall include a provision that the operator will voluntarily surrender the license if

51 substantial compliance is not reached in accordance with the terms and deadlines established
52 under the agreement. The agreement shall specify the stages, actions and time span to achieve
53 substantial compliance.

54 [6.] 7. Whenever a notice of noncompliance has been issued, the operator shall post a
55 copy of the notice of noncompliance and a copy of the most recent inspection report in a
56 conspicuous location in the facility, and the department shall send a copy of the notice of
57 noncompliance to the division of family services of the department of social services, the
58 department of mental health, and any other concerned federal, state or local governmental
59 agencies.

198.029. The provisions of section 198.026 notwithstanding, whenever a duly authorized
2 representative of the department finds upon inspection of a licensed facility, and the director of
3 the department finds upon review, that the facility or the operator is not in substantial compliance
4 with a standard or standards the violations of which would present either an imminent danger
5 to the health, safety or welfare of any resident or a substantial probability that death or serious
6 physical harm would result and which is not immediately corrected, the department shall:

7 (1) Give immediate written notice of the noncompliance to the operator, administrator
8 or person managing or supervising the conduct of the facility **and a copy of such notice to the**
9 **attorney general** at the time the noncompliance is found;

10 (2) Make public the fact that a notice of noncompliance has been issued to the facility.
11 Copies of the notice shall be sent to appropriate hospitals and social service agencies;

12 (3) Send a copy of the notice of noncompliance to the division of family services of the
13 department of social services, the department of mental health, and any other concerned federal,
14 state or local government agencies. The facility shall post in a conspicuous location in the
15 facility a copy of the notice of noncompliance and a copy of the most recent inspection report.

198.030. Notwithstanding any other law to the contrary, every residential care
2 **facility I and residential care facility II shall meet or exceed the federal requirements**
3 **relating to the posting of deficiencies for federally certified skilled nursing facilities and**
4 **intermediate care facilities.**

198.032. 1. Nothing contained in **sections 187.020 to 187.050, RSMo, and** sections
2 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical,
3 social, personal or financial records of any resident in any facility, except when disclosed in a
4 manner which does not identify any resident, or when ordered to do so by a court of competent
5 jurisdiction. Such records shall be accessible without court order for examination and copying
6 only to the following persons or offices, or to their designees:

7 (1) The department or any person or agency designated by the department;

8 (2) The attorney general;

9 (3) The department of mental health for residents placed **to, from, or** through that
10 department;

11 (4) Any appropriate law enforcement agency;

12 (5) The resident, [his] **the resident's** guardian **or conservator**, or any other person
13 designated by the resident; and

14 (6) Appropriate committees of the general assembly and the state auditor, but only to the
15 extent of financial records which the operator is required to maintain pursuant to sections
16 198.088 and 198.090.

17 2. Inspection reports and written reports of investigations of complaints, of substantiated
18 reports of abuse and neglect received in accordance with [section 198.070] **sections 187.020 to**
19 **187.028, RSMo**, and complaints received by the department relating to the quality of care of
20 facility residents, shall be accessible to the public for examination and copying, provided that
21 such reports are disclosed in a manner which does not identify the complainant or any particular
22 resident. Records and reports shall clearly show what steps the department and the institution
23 are taking to resolve problems indicated in said inspections, reports and complaints.

24 3. The department shall maintain a central registry capable of receiving and maintaining
25 reports received in a manner that facilitates rapid access and recall of the information reported,
26 and of subsequent investigations and other relevant information. The department shall
27 electronically record any telephone report of suspected abuse and neglect received by the
28 department and such recorded reports shall be retained by the department for a period of one year
29 after recording.

30 4. Although reports to the central registry may be made anonymously, the department
31 shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect,
32 attempt to obtain the name and address of any person making a report.

198.036. 1. The department may revoke a license in any case in which it finds that the
2 operator:

3 (1) Failed or refused to comply with class I or II standards, as established by the
4 department pursuant to section 198.085 **or where the operator was cited for failure to comply**
5 **with a particular class I standard on two different occasions within a twenty-four month**
6 **period; [or]**

7 (2) Failed or refused to comply with class III standards as established by the department
8 pursuant to section 198.085, where the aggregate effect of such noncompliances presents either
9 an imminent danger to the health, safety or welfare of any resident or a substantial probability
10 that death or serious physical harm would result **or where the operator was cited for failure**
11 **to comply with a particular class II or III standard on two different occasions within a**
12 **twelve month period;**

13 [(2)] (3) Refused to allow representatives of the department to inspect the facility for
14 compliance with standards;

15 [(3)] (4) Knowingly acted or knowingly omitted any duty in a manner which would
16 materially and adversely affect the health, safety, welfare or property of a resident; or

17 [(4)] (5) Demonstrated financial incapacity to operate and conduct the facility in
18 accordance with the provisions of sections 198.003 to 198.096.

19 2. Upon revocation of a license, the director of the department shall so notify the
20 operator in writing, setting forth the reason and grounds for the revocation. Notice of such
21 revocation shall be sent either by certified mail, return receipt requested, to the operator at the
22 address of the facility, or served personally upon the operator. The department shall provide the
23 operator notice of such revocation at least ten days prior to its effective date.

198.039. 1. Any person aggrieved by an official action of the department either refusing
2 to issue a license or revoking a license may seek a determination thereon by the administrative
3 hearing commission pursuant to the provisions of section 621.045, RSMo, et seq., except that
4 the petition must be filed with the administrative hearing commission within fifteen days after
5 the mailing or delivery of notice to the operator. It shall not be a condition to such determination
6 that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure
7 within the department.

8 2. The administrative hearing commission may stay the revocation of such license,
9 pending the commission's findings and determination in the cause, upon such conditions, **with**
10 **or without the agreement of the parties**, as the commission deems necessary and appropriate
11 including the posting of bond or other security except that the commission shall not grant a stay
12 or if a stay has already been entered shall set aside its stay, [if upon application of the
13 department] **unless** the commission finds **that the facility operator has established** reason to
14 believe that continued operation of a facility pending the commission's final determination would
15 **not** present an imminent danger to the health, safety or welfare of any resident or a substantial
16 probability that death or serious physical harm would result. **In such cases, the burden of going**
17 **forward with the evidence as well as the ultimate burden of persuasion is upon the facility.**
18 In any case in which the department has refused to issue a license, the commission shall have no
19 authority to stay or to require the issuance of a license pending final determination by the
20 commission.

21 3. The administrative hearing commission shall make the final decision as to the
22 issuance or revocation of a license **based upon the circumstances and conditions as they**
23 **existed at the time of the alleged deficiencies and not based upon circumstances and**
24 **conditions after the time of the decision not to issue or revoke a license.** Any person
25 aggrieved by a final decision of the administrative hearing commission, including the

26 department, may seek judicial review of such decision by filing a petition for review in the court
27 of appeals for the district in which the facility is located. Review shall be had, except as
28 modified herein, in accordance with the provisions of sections 621.189 and 621.193, RSMo.

198.067. 1. An action may be brought by the department, or by the attorney general on
2 his or her own volition or at the request of the department or any other appropriate state agency,
3 to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096,
4 to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to
5 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action
6 brought pursuant to the provisions of this section shall be placed at the head of the docket by the
7 court, and the court shall hold a hearing on any action brought pursuant to the provisions of this
8 section no [less] **later** than fifteen days after the filing of the action.

9 2. The department **or attorney general** may bring an action in circuit court to recover
10 a civil penalty against the licensed operator of the facility as provided by this section. Such
11 action shall be brought in the circuit court for the county in which the facility is located. The
12 circuit court shall determine the amount of penalty to be assessed within the limits set out in this
13 section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

14 3. The operator of any facility which has been cited with a violation of sections 198.003
15 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of
16 Section 1396r of Title 42 of the United States Code or the regulations established pursuant
17 thereto, is liable to the state for civil penalties of up to ten thousand dollars for each day that the
18 violations existed or continue to exist, **regardless of whether they are later corrected**.
19 Violations shall be presumed to continue to exist from the time they are found until the time the
20 division of aging finds them to have been corrected. The amount of the penalty shall be
21 determined as follows:

22 (1) For each violation of a class I standard, not less than one hundred fifty dollars nor
23 more than one thousand dollars;

24 (2) For each violation of a class II standard, not less than fifty dollars nor more than five
25 hundred dollars;

26 (3) For each violation of a class III standard, not less than fifteen dollars nor more than
27 one hundred fifty dollars;

28 (4) For each violation of a federal standard which does not also constitute a violation of
29 a state law or regulation, not less than two hundred fifty dollars nor more than five hundred
30 dollars;

31 (5) For each specific class I violation by the same operator which has been cited
32 **previously** within the past twenty-four months and for each specific class II or III violation by
33 the same operator which has been cited **previously** within the past twelve months, double the

34 amount last imposed.

35

36 As used in this [subdivision] **subsection** the term "violation" shall mean a breach of a specific
37 state or federal standard or statute which remains uncorrected and not in accord with the accepted
38 plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section
39 198.026 or the regulations established pursuant to Title 42 of the United States Code. A
40 judgment rendered against the operator of a facility pursuant to this subsection shall bear interest
41 as provided in subsection 1 of section 408.040, RSMo.

42 4. Any individual who willfully and knowingly certifies pursuant to subsection
43 (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement
44 in a resident assessment is subject to a civil penalty of not more than one thousand dollars with
45 respect to each assessment. Any individual who willfully and knowingly causes another
46 individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United
47 States Code a material and false statement in a resident assessment is subject to a civil penalty
48 of not more than five thousand dollars with respect to each assessment.

49 5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not
50 bar the imposition of any other remedy.

51 6. Penalties collected pursuant to this section shall be deposited in the [division of aging]
52 elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such
53 penalties shall not be considered a charitable contribution for tax purposes.

54 7. To recover any civil penalty, the moving party shall prove by clear and convincing
55 evidence that the violation occurred.

56 8. The licensed operator of a facility against whom an action to recover a civil penalty
57 is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo,
58 at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount
59 of the civil penalty recommended by the moving party in its petition shall be reduced by
60 twenty-five percent and the confessed judgment shall be entered by the circuit court at the
61 reduced amount.

62 9. The amount of any civil penalty assessed by the circuit court pursuant to this section
63 [shall] **may** be reduced by the amount of any civil monetary penalty which the licensed operator
64 of the facility may establish it has paid pursuant to the laws of the United States for the breach
65 of the same federal standards **and arising out of the same conduct** for which the state action
66 is brought.

67 10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this
68 section, any facility which is cited with a violation of a class I standard pursuant to subsection
69 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual

70 nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be
71 liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds
72 licensed to the facility, up to a maximum of ten thousand dollars pursuant to subsections 1 and
73 2 of this section. The liability of the facility for civil penalties pursuant to this section shall be
74 incurred immediately upon the citation of the violation and shall not be affected by any
75 subsequent correction of the violation. For the purposes of this section, "serious physical injury"
76 means physical injury that creates a substantial risk of death or that causes serious disfigurement
77 or protracted loss or impairment of the function of any part of the body.

**198.068. In accordance with the provisions of section 198.067, the general assembly
2 specifically intends for the civil penalties in section 198.067 to be imposed in cases where
3 there has been more than one violation or a pattern of violations, regardless of any
4 subsequent correction of the violation by a facility.**

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate care
2 facility after January 1, 1980, shall have successfully completed a nursing assistant training
3 program approved by the department [or shall enroll in and begin the first available approved
4 training program which is scheduled to commence within ninety days of the date of the nursing
5 assistant's employment] **which shall be completed within one hundred twenty days of
6 employment.** Training programs shall be offered at a location most reasonably accessible to the
7 enrollees in each class. The program may be established **and carried out** by the skilled nursing
8 or intermediate care facility **so long as that facility has not been cited for any class I violation
9 within the past twenty-four months**, by a professional organization, or by the department, and
10 training shall be given by the personnel of the facility, by a professional organization, by the
11 department, by any junior college or by the vocational education department of any high school.
12 **No program shall offer or provide training pursuant to this section unless the department
13 has approved the program prior to the offering or provision of such training.**

14 2. As used in this section the term "nursing assistant" means an employee, including a
15 nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility to
16 provide or assist in the provision of direct resident health care services under the supervision of
17 a nurse licensed under the nursing practice law, chapter 335, RSMo. This section shall not apply
18 to any person otherwise licensed to perform health care services under the laws of this state. It
19 shall not apply to volunteers or to members of religious or fraternal orders which operate and
20 administer the facility, if such volunteers or members work without compensation.

21 3. The training program after January 1, 1989, shall consist of at least the following:

22 (1) A training program consisting of at least seventy-five classroom hours of training on
23 basic nursing skills, clinical practice, resident safety and rights, the social and psychological
24 problems of residents, and the methods of handling and caring for mentally confused residents

25 such as those with Alzheimer's disease and related disorders, and one hundred hours supervised
26 and on-the-job training. The one hundred hours **shall be completed within one hundred**
27 **twenty days of employment and** may consist of normal employment as a nurse [assistants]
28 **assistant** under the supervision of a licensed nurse; and

29 (2) Continuing in-service training to assure continuing competency in existing and new
30 nursing skills. [All nursing assistants trained prior to January 1, 1989, shall attend, by August
31 31, 1989, an entire special retraining program established by rule or regulation of the department
32 which shall contain information on methods of handling mentally confused residents and which
33 may be offered on premises by the employing facility.]

34 4. Nursing assistants who have not successfully completed the nursing assistant training
35 program prior to employment may begin duties as a nursing assistant only after completing an
36 initial twelve hours of basic orientation approved by the department and may provide direct
37 resident care only if under the general supervision of a licensed nurse prior to completion of the
38 seventy-five classroom hours of the training program.

198.088. 1. Every facility, in accordance with the rules applying to each particular type
2 of facility, shall ensure that:

3 (1) There are written policies and procedures available to staff, residents, their families
4 or legal representative and the public which govern all areas of service provided by the facility.
5 The facility shall also retain and make available for public inspection at the facility to staff,
6 residents, their families or legal representative and the public a complete copy of each official
7 notification from the department of violations, deficiencies, licensure approvals, disapprovals,
8 and responses, a description of services, basic rate and charges for any services not covered by
9 the basic rate, if any, and a list of names, addresses and occupation of all individuals who have
10 a proprietary interest in the facility;

11 (2) Policies relating to admission, transfer, and discharge of residents shall assure that:

12 (a) Only those persons are accepted whose needs can be met by the facility directly or
13 in cooperation with community resources or other providers of care with which it is affiliated or
14 has contracts;

15 (b) As changes occur in their physical or mental condition, necessitating service or care
16 which cannot be adequately provided by the facility, residents are transferred promptly to
17 hospitals, skilled nursing facilities, or other appropriate facilities; and

18 (c) Except in the case of an emergency, the resident, [his] **the resident's** next of kin,
19 attending physician, and the responsible agency, if any, are consulted at least thirty days in
20 advance of the transfer or discharge of any resident, and casework services or other means are
21 utilized to assure that adequate arrangements exist for meeting [his] **the resident's** needs through
22 other resources;

- 23 (3) Policies define the uses of chemical and physical restraints, identify the professional
24 personnel who may authorize the application of restraints in emergencies and describe the
25 mechanism for monitoring and controlling their use;
- 26 (4) Policies define procedures for submittal of complaints and recommendations by
27 residents and for assuring response and disposition;
- 28 (5) There are written policies governing access to, duplication of, and dissemination of
29 information from the resident's records;
- 30 (6) Each resident admitted to the facility:
- 31 (a) Is fully informed of his **or her** rights and responsibilities as a resident. Prior to or at
32 the time of admission, a list of resident rights shall be provided to each resident, or [his] **the**
33 **resident's** designee, next of kin, or legal guardian. A list of resident rights shall be posted in a
34 conspicuous location in the facility and copies shall be available to anyone upon request;
- 35 (b) Is fully informed in writing, prior to or at the time of admission and during stay, of
36 services available in the facility, and of related charges including any charges for services not
37 covered under the federal or state programs or not covered by the facility's basic per diem rate;
- 38 (c) Is fully informed by a physician of his **or her** health and medical condition unless
39 medically contraindicated, as documented by a physician in his **or her** resident record, and is
40 afforded the opportunity to participate in the planning of [his] **the resident's** total care and
41 medical treatment and to refuse treatment, and participates in experimental research only upon
42 [his] **the resident's** informed written consent;
- 43 (d) Is transferred or discharged only for medical reasons or for [his] **the resident's**
44 welfare or that of other residents, or for nonpayment for [his] **the resident's** stay. No resident
45 may be discharged without notice of his **or her** right to a hearing and an opportunity to be heard
46 on the issue of whether [his] **the resident's** immediate discharge is necessary. Such notice shall
47 be given in writing no less than thirty days in advance of the discharge except in the case of an
48 emergency discharge. In emergency discharges a written notice of discharge and right to a
49 hearing shall be given as soon as practicable and an expedited hearing shall be held upon request
50 of the resident, next of kin, legal guardian, or nursing facility;
- 51 (e) Is encouraged and assisted, throughout [his] **the resident's** period of stay, to exercise
52 his **or her** rights as a resident and as a citizen, and to this end may voice grievances and
53 recommend changes in policies and services to facility staff or to outside representatives of [his]
54 **the resident's** choice, free from restraint, interference, coercion, discrimination, or reprisal;
- 55 (f) May manage [his] **the resident's** personal financial affairs, and, to the extent that the
56 facility assists in such management, has [his] **the resident's** personal financial affairs managed
57 in accordance with section 198.090;
- 58 (g) Is free from mental and physical abuse **and neglect**, and free from chemical and

59 physical restraints except as follows:

- 60 a. When used as a part of a total program of care to assist the resident to attain or
61 maintain the highest practicable level of physical, mental or psychosocial well-being;
62 b. When authorized in writing by a physician for a specified period of time; and
63 c. When necessary in an emergency to protect the resident from injury to himself **or**
64 **herself**, or to others, in which case restraints may be authorized by designated professional
65 personnel who promptly report the action taken to the physician.

66
67 When restraints are indicated, devices that are least restrictive, consistent with the resident's total
68 treatment program, shall be used;

69 (h) Is ensured confidential treatment of all information contained in [his] **the resident's**
70 records, including information contained in an automatic data bank, and [his] **the resident's**
71 written consent shall be required for the release of information to persons not otherwise
72 authorized under law to receive it;

73 (i) Is treated with consideration, respect, and full recognition of [his] **the resident's**
74 dignity and individuality, including privacy in treatment and in care for [his] **the resident's**
75 personal needs;

76 (j) Is not required to perform services for the facility;

77 (k) May communicate, associate and meet privately with persons of [his] **the resident's**
78 choice, unless to do so would infringe upon the rights of other residents, and send and receive
79 his **or her** personal mail unopened;

80 (l) May participate in activities of social, religious and community groups at [his] **the**
81 **resident's** discretion, unless contraindicated for reasons documented by a physician in the
82 resident's medical record;

83 (m) May retain and use [his] **the resident's** personal clothing and possessions as space
84 permits;

85 (n) If married, is ensured privacy for visits by his or her spouse; if both are residents in
86 the facility, they are permitted to share a room; and

87 (o) Is allowed the option of purchasing or renting goods or services not included in the
88 per diem or monthly rate from a supplier of [his] **the resident's** own choice;

89 (7) The resident or [his] **the resident's** designee, next of kin or legal guardian receives
90 an itemized bill for all goods and services actually rendered;

91 (8) A written account, available to residents and their families, is maintained on a current
92 basis for each resident with written receipts for all personal possessions and funds received by
93 or deposited with the facility and for all disbursements made to or on behalf of the resident.

94 2. Each facility and the department shall encourage and assist residents in the free

95 exercise of the resident's rights to civil and religious liberties, including knowledge of available
96 choices and the right to independent personal decision. Each resident shall be given a copy of
97 a statement of [his] **the resident's** rights and responsibilities, including a copy of the facility's
98 rules and regulations. Each facility shall prepare a written plan to ensure the respect of each
99 resident's rights and privacy and shall provide appropriate staff training to implement the plan.

100 3. (1) Each facility shall establish written procedures approved by the department by
101 which complaints and grievances of residents may be heard and considered. The procedures
102 shall provide for referral to the department of any complaints or grievances not resolved by the
103 facility's grievance procedure.

104 (2) Each facility shall designate one staff member, employed full time, referred to in this
105 subsection as the "designee", to receive all grievances when they are first made.

106 (3) If anyone wishes to complain about treatment, conditions, or violations of rights, [he]
107 **such person** shall write or cause to be written his **or her** grievance or shall state it orally to the
108 designee no later than fourteen days after the occurrence giving rise to the grievance. When the
109 department receives a complaint that does not contain allegations of abuse or neglect or
110 allegations which would, if substantiated, constitute violation of a class I or class II standard as
111 defined in section 198.085, and the complainant indicates that the complaint was not filed with
112 the facility prior to the reporting of it to the department, the department may in such instances
113 refer the complaint to the staff person who is designated by the facility to receive all grievances
114 when they are first made. In such instances the department shall assure appropriate response
115 from the facility, assure resolution at a subsequent on-site visit and provide a report to the
116 complainant. The designee shall confer with persons involved in the occurrence and with any
117 other witnesses and, no later than three days after the grievance, give a written explanation of
118 findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone
119 other than the complainant. Where appropriate because of the mental or physical condition of
120 the complainant or the aggrieved party, the written explanation shall be accompanied by an oral
121 explanation.

122 (4) The department shall establish and implement procedures for the making and
123 transmission of complaints to the department by any person alleging violation of the provisions
124 of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the standards
125 established thereunder. The department shall promptly review each complaint. In the case of
126 a refusal to investigate, the department shall promptly notify the complainant of its refusal and
127 the reasons therefor; and in every other case, the department shall, following investigation, notify
128 the complainant of its investigation and any proposed action.

129 4. Whenever the department finds upon investigation that there have been violations of
130 the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the

standards established thereunder by any person licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or 344, RSMo, the department shall forward a report of its findings to the appropriate licensing or examining board for further investigation.

5. Each facility shall maintain a complete record of complaints and grievances made against such facility and a record of the final disposition of the complaints and grievances. Such record shall be open to inspection by representatives of the department during normal business hours.

6. Nothing in this section shall be construed as requiring a resident to exhaust grievance procedures established by the facility or by the department prior to filing a complaint pursuant to section 198.090.

198.090. 1. An operator may make available to any resident the service of holding in trust personal possessions and funds of the resident and shall, as authorized by the resident, expend the funds to meet the resident's personal needs. In providing this service the operator shall:

(1) At the time of admission, provide each resident or [his] **the resident's** next of kin or legal guardian with a written statement explaining the resident's rights regarding personal funds;

(2) Accept funds and personal possessions from or for a resident for safekeeping and management, only upon written authorization by the resident or by [his] **the resident's** designee, or guardian in the case of an adjudged incompetent;

(3) Deposit any personal funds received from or on behalf of a resident in an account separate from the facility's funds, except that an amount to be established by rule of the [division of aging] **department** may be kept in a petty cash fund for the resident's personal needs;

(4) Keep a written account, available to a resident and [his] **a resident's** designee or guardian, maintained on a current basis for each resident, with written receipts, for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident;

(5) Provide each resident or [his] **the resident's** designee or guardian with a quarterly accounting of all financial transactions made on behalf of the resident;

(6) Within five days of the discharge of a resident, provide the resident, or [his] **the resident's** designee or guardian, with an up-to-date accounting of the resident's personal funds and return to the resident the balance of [his] **the resident's** funds and all [his] **the resident's** personal possessions;

(7) Upon the death of a resident who has been a recipient of aid, assistance, care, services, or who has had moneys expended on his **or her** behalf by the department of social services, provide the department a complete account of all the resident's personal funds within

27 sixty days from the date of death. The total amount paid to the decedent or expended upon his
28 **or her** behalf by the department shall be a debt due the state and recovered from the available
29 funds upon the department's claim on such funds. The department shall make a claim on the
30 funds within sixty days from the date of the accounting of the funds by the facility. The nursing
31 facility shall pay the claim made by the department of social services from the resident's personal
32 funds within sixty days. Where the name and address are reasonably ascertainable, the
33 department of social services shall give notice of the debt due the state to the person whom the
34 recipient had designated to receive the quarterly accounting of all financial transactions made
35 **[under] pursuant to** this section, or the resident's guardian or conservator or the person or
36 persons listed in nursing home records as a responsible party or the fiduciary of the resident's
37 estate. If any funds are available after the department's claim, the remaining provisions of this
38 section shall apply to the balance, unless the funds belonged to a person other than the resident,
39 in which case the funds shall be paid to that person;

40 (8) Upon the death of a resident who has not been a recipient of aid, assistance, care,
41 services, or who has not had moneys expended on his **or her** behalf by the department of social
42 services or the department has not made a claim on the funds, provide the fiduciary of resident's
43 estate, at the fiduciary's request, a complete account of all the resident's personal funds and
44 possessions and deliver to the fiduciary all possessions of the resident and the balance of the
45 resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such
46 funds or possessions, the operator shall notify the department that the funds remain unclaimed.
47 Such unclaimed funds or possessions shall be disposed of as follows:

48 (a) If the unclaimed funds or possessions have a value totaling one hundred and fifty
49 dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund
50 to be used for the benefit of all residents of the facility by providing the residents social or
51 educational activities. The facility shall keep an accounting of the acquisitions and expenditure
52 of these funds; or

53 (b) If the unclaimed funds or possessions have a value greater than one hundred and fifty
54 dollars, the funds or possessions shall be immediately presumed to be abandoned property
55 **[under] pursuant to** sections 447.500 to 447.585, RSMo, and the procedures provided for in
56 those sections shall apply notwithstanding any other provisions of those sections which require
57 a period greater than two years for a presumption of abandonment;

58 (9) Upon ceasing to be the operator of a facility, all funds and property held in trust
59 pursuant to this section shall be transferred to the new operator in accordance with sound
60 accounting principles, and a closeout report signed by both the outgoing operator and the
61 successor operator shall be prepared. The closeout report shall include a list of current balances
62 of all funds held for residents respectively and an inventory of all property held for residents

63 respectively. If the outgoing operator refuses to sign the closeout report, he **or she** shall state in
64 writing the specific reasons for his **or her** failure to so sign, and the successor operator shall
65 complete the report and attach an affidavit stating that the information contained therein is true
66 to the best of his **or her** knowledge and belief. Such report shall be retained with all other
67 records and accounts required to be maintained [under] **pursuant to** this section;

68 (10) Not be required to invest any funds received from or on behalf of a resident, nor to
69 increase the principal of any such funds.

70 2. Any owner, operator, manager, employee, or affiliate of an owner or operator who
71 receives any personal property or anything else of value from a resident, shall, if the thing
72 received has a value of ten dollars or more, make a written statement giving the date it was
73 received, from whom it was received, and its estimated value. Statements required to be made
74 pursuant to this subsection shall be retained by the operator and shall be made available for
75 inspection by the department, or by the department of mental health when the resident has been
76 placed by that department, and by the resident, and [his] **the resident's** designee or legal
77 guardian. Any person who fails to make a statement required by this subsection is guilty of a
78 class C misdemeanor.

79 3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in
80 one calendar year receive any personal property or anything else of value from the residents of
81 any facility which have a total estimated value in excess of one hundred dollars.

82 4. Subsections 2 and 3 of this section shall not apply if the property or other thing of
83 value is held in trust in accordance with subsection 1 of this section, is received in payment for
84 services rendered or pursuant to the terms of a lawful contract, or is received from a resident who
85 is related to the recipient within the fourth degree of consanguinity or affinity.

86 5. Any operator who fails to maintain records or who fails to maintain any resident's
87 personal funds in an account separate from the facility's funds as required by this section shall
88 be guilty of a class C misdemeanor.

89 6. Any operator, or any affiliate or employee of an operator, who puts to his **or her** own
90 use or the use of the facility or otherwise diverts from the resident's use any personal funds of
91 the resident shall be guilty of a class A misdemeanor.

92 7. Any person having reasonable cause to believe that a misappropriation of a resident's
93 funds or property has occurred may report such information to the department.

94 8. For each report the [division] **department** shall attempt to obtain the name and
95 address of the facility, the name of the facility employee, the name of the resident, information
96 regarding the nature of the misappropriation, the name of the complainant, and any other
97 information which might be helpful in an investigation.

98 9. Upon receipt of a report, the department shall initiate an investigation.

10. If the investigation indicates probable misappropriation of property or funds of a resident, the investigator shall refer the complaint together with [his] **the investigator's** report to the department director or [his] **the director's** designee for appropriate action.

11. Reports shall be confidential, as provided [under section 660.320] **pursuant to section 187.087**, RSMo.

12. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

13. Within five working days after a report required to be made [under] **pursuant to** this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

14. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because [he] **the resident or employee** or any member of his **or her** family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he **or she** has reasonable cause to believe has been committed or has occurred.

15. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section [660.315] **187.080**, RSMo, to have misappropriated any property or funds of a resident while employed in any facility.

198.093. 1. Any resident or former resident who is deprived of any right created by sections 198.088 and 198.090, or the estate of a former resident so deprived, may file a written complaint within [one hundred eighty days] **two years** of the alleged deprivation or injury with the office of the attorney general describing the facts surrounding the alleged deprivation. A copy of the complaint shall be sent to the department by the attorney general.

2. The attorney general shall review each complaint and may initiate legal action as provided under sections 198.003 to 198.186.

3. If the attorney general fails to initiate a legal action within sixty days of receipt of the complaint, the complainant may, within two hundred forty days of filing the complaint with the attorney general, bring a civil action in an appropriate court against any owner, operator or the agent of any owner or operator to recover actual damages. The court may, in its discretion, award punitive damages which shall be limited to the larger of five hundred dollars or five times the amount of special damages, unless the deprivation complained of is the result of an intentional act or omission causing physical or emotional injury to the resident, and may award

15 to the prevailing party attorney's fees based on the amount of time reasonably expended, and may
16 provide such equitable relief as it deems necessary and proper; except that, an attorney who is
17 paid in whole or part from public funds for his **or her** representation in any cause arising under
18 this section shall not be awarded any attorney fees.

19 4. No owner or operator who pleads and proves as an affirmative defense that he **or she**
20 exercised all care reasonably necessary to prevent the deprivation and injury for which liability
21 is asserted shall be liable under this section.

22 5. Persons bringing suit to recover against a bond for personal funds pursuant to section
23 198.096 shall not be required to first file a complaint with the attorney general pursuant to
24 subsection 1 of this section, nor shall subsection 1 be construed to limit in any way the right to
25 recover on such bond.

26 6. Nothing contained in sections 198.003 to 198.186 shall be construed as abrogating,
27 abridging or otherwise limiting the right of any person to bring appropriate legal actions in any
28 court of competent jurisdiction to insure or enforce any legal right or to seek damages, nor shall
29 any provision of the above-named sections be construed as preventing or discouraging any
30 person from filing a complaint with the department or notifying the department of any alleged
31 deficiency or noncompliance on the part of any facility.

198.525. **Except as otherwise provided for in section 198.526**, in order to comply with
2 sections 198.012 and 198.022, the department of health and senior services shall inspect
3 residential care facilities II, intermediate care facilities and skilled nursing facilities attached to
4 acute care hospitals at least twice a year.

198.526. 1. **Except as provided for in subsection 3 of this section**, the [division of
2 aging] **department of health and senior services** shall inspect all facilities licensed by the
3 [division] **department** at least twice each year. Such inspections shall be conducted:

4 (1) Without the prior notification of the facility; and

5 (2) At times of the day, on dates and at intervals which do not permit facilities to
6 anticipate such inspections.

7 2. The [division] **department** shall annually reevaluate the inspection process to ensure
8 the requirements [of subsection 1] of this section are met.

9 3. The department may reduce the frequency of inspections to once a year if:

10 (1) A facility is found to be in substantial compliance during an inspection; except that,
11 one or more revisits to an original inspection is not substantial compliance; and

12 (2) In the year subsequent to a finding of substantial compliance, the facility has no
13 substantiated complaints involving class I or class II deficiencies; and

14 (3) In the year subsequent to a finding of substantial compliance, the facility does not
15 have a change in ownership, operator, or director of nursing.

16 4. Notwithstanding any other provision of law to the contrary, the department may
17 inspect any facility at any time. The department may, but is not required, to conduct an
18 inspection in connection with the investigation of any complaint filed against any facility.
19 Federal laws and rules governing surveys of facilities are not affected by the provisions of this
20 or any other provision of state law.

21 **5. Any employee who knowingly discloses the time of an unannounced inspection**
22 **to any person not involved in inspection and enforcement functions is guilty of a class A**
23 **misdemeanor and shall have his or her employment immediately terminated.**

 198.532. Complaints filed with the [division of aging] **department of health and senior**
2 **services** against a long-term care facility which allege that harm has occurred or is likely to occur
3 to a resident or residents of the facility due to actions or the lack of actions taken by the facility
4 shall be investigated within thirty days of receipt of such complaints. The purpose of such
5 investigation shall be to ensure the safety, protection and care of all residents of the facility likely
6 to be affected by the alleged action or inaction. Such investigation shall be in addition to the
7 investigation requirements for abuse and neglect reports pursuant to [section 198.070] **sections**
8 **187.020 to 187.028, RSMo.** The [division] **department** shall provide the results of all
9 investigations in accordance with section [660.320] **187.087, RSMo.** The [division] **department**
10 shall provide the results of such investigation in writing to all parties to the complaint, and if
11 requested, to any of the facility's residents, or their family members or guardians. Complaints and
12 written results will be readily available for public access and review at the [division of aging]
13 **department of health and senior services** and at the long-term care facility. Personal
14 information identifying the resident will be blanked out, except in regard to immediate family,
15 the attorney-in-fact or the legal guardian of the resident in question. This information will
16 remain readily available for a period of time determined by the [division of aging] **department.**

 210.933. **1. Until January 1, 2004,** for any elder-care worker listed in the registry or
2 who has submitted the registration form as required by sections 210.900 to 210.936, an
3 elder-care provider may access the registry in lieu of the requirements established pursuant to
4 section [660.315] **187.080, RSMo,** or to subsections 3, 4 and 5 of section [660.317] **187.084,**
5 **RSMo.**

6 **2. Effective January 1, 2004, elder-care providers subject to the provisions of**
7 **section 187.084, RSMo, shall access the family care safety registry to satisfy the**
8 **requirements in section 187.084, RSMo, regarding criminal background checks and a**
9 **check of the employee disqualification list.**

 210.936. For purposes of providing background information pursuant to sections
2 210.900 to 210.936, reports and related information pursuant to sections [198.070 and] **187.020**
3 **to 187.028, 187.050 and 187.080, RSMo, section 198.090, RSMo, sections 210.109 to 210.183,**

4 **and** section 630.170, RSMo, [and sections 660.300 to 660.317, RSMo,] shall be deemed public
5 records.

344.050. 1. The board may refuse to issue or renew any certificate of registration or
2 authority, permit or license required pursuant to this chapter for one or any combination of
3 causes stated in subsection 2 of this section. The board shall notify the applicant in writing of
4 the reasons for the refusal and shall advise the applicant of his **or her** right to file a complaint
5 with the administrative hearing commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter 621, RSMo, against any holder of any certificate of
8 registration or authority, permit or license required by this chapter or any person who has failed
9 to renew or has surrendered his **or her** certificate of registration or authority, permit or license
10 for any one or any combination of the following causes:

11 (1) Use or unlawful possession of any controlled substance, as defined in chapter 195,
12 RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the
13 work of any profession licensed or regulated by this chapter;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
15 or nolo contendere, pursuant to criminal prosecution [under] **pursuant to** the laws of any state
16 or of the United States, for any offense reasonably related to the qualifications, functions or
17 duties of any profession licensed or regulated [under] **pursuant to** this chapter, for any offense
18 an essential element of which is fraud, dishonesty or an act of violence, or for any offense
19 involving moral turpitude, whether or not sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
21 registration or authority, permit or license issued pursuant to this chapter or in obtaining
22 permission to take any examination given or required pursuant to this chapter;

23 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
24 fraud, deception or misrepresentation;

25 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
26 in the performance of the functions or duties of any profession licensed or regulated by this
27 chapter;

28 (6) Violation of, or assisting or enabling any person to violate, any provision of this
29 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

30 (7) Impersonation of any person holding a certificate of registration or authority, permit
31 or license, or allowing any person to use his **or her** certificate of registration or authority, permit,
32 license or diploma from any school;

33 (8) Disciplinary action against the holder of a license or other right to practice any
34 profession regulated by this chapter granted by another state, territory, federal agency or country

35 upon grounds for which revocation or suspension is authorized in this state;

36 (9) A person is finally adjudged incapacitated or disabled by a court of competent
37 jurisdiction;

38 (10) Assisting or enabling any person to practice or offer to practice any profession
39 licensed or regulated by this chapter who is not registered and currently eligible to practice
40 [under] **pursuant to** this chapter;

41 (11) Issuance of a certificate of registration or authority, permit or license based upon
42 a material mistake of fact;

43 (12) Violation of the drug laws or rules and regulations of this state, any other state or
44 the federal government;

45 (13) Knowingly failing to report abuse or neglect of a resident in a long-term care
46 facility, as required by section [198.070] **187.020**, RSMo, of which he has actual knowledge that
47 it is abuse or neglect.

48 3. The administrative hearing commission shall have no authority to require issuance of
49 a license, pending a final determination by the commission, in any case in which an applicant is
50 seeking initial licensure.

51 4. No license may be suspended or revoked and no application for renewal of a license
52 may be denied [under] **pursuant to** this section until the licensee has been afforded an
53 opportunity for hearing after due notice as provided in sections 621.015 to 621.205, RSMo.

54 5. Upon a finding by the administrative hearing commission that the grounds, provided
55 in subsection 2 of this section, for disciplinary action are met, the board may, singly or in
56 combination, place upon probation, suspend or revoke a certificate of registration or authority,
57 permit or license.

**491.076. 1. Any statement by an elderly or disabled person, as defined in section
2 660.053, RSMo, made at or near the time of an alleged crime or other misconduct toward
3 such elderly or disabled person shall be admissible into evidence in criminal, civil and
4 administrative proceedings in this state as substantive evidence to prove the truth of the
5 matter asserted if:**

6 **(1) The person is unavailable as a witness at the time of the criminal, civil or
7 administrative proceeding due to the person's physical or mental condition; and**

8 **(2) The court finds, in a hearing conducted outside the presence of the jury that the
9 time, content and circumstances of the statement provide sufficient indicia of reliability
10 and the declarant was competent.**

11 **2. A statement may not be admitted pursuant to this section unless the party
12 offering the statement makes known to the other party or the other party's counsel his or
13 her intention to offer the statement and the particulars of the statement sufficiently in**

14 advance of the proceedings to provide the other party or the other party's counsel with a
15 fair opportunity to prepare to meet the statement.

16 3. Nothing in this section shall be construed to limit the admissibility of statements,
17 admissions or confessions otherwise admissible by law.

565.200. 1. Any owner or employee of a skilled nursing facility, as defined in
2 section 198.006, RSMo, or an Alzheimer's special unit or program, as defined in section
3 198.505, RSMo, who:

4 (1) Has sexual contact, as defined in section 566.010, RSMo, with a resident is guilty
5 of a class B misdemeanor. Any person who commits a second or subsequent violation of
6 this subdivision is guilty of a class A misdemeanor; or

7 (2) Has sexual intercourse or deviant sexual intercourse, as defined in section
8 566.010, RSMo, with a resident is guilty of a class D felony. Any person who commits a
9 second or subsequent violation of this subdivision is guilty of a class C felony.

10 2. The provisions of this section shall not apply to an owner or employee of a skilled
11 nursing facility or Alzheimer's special unit or program who engages in sexual conduct, as
12 defined in section 566.010, RSMo, with a resident to whom the owner or employee is
13 married.

660.030. 1. No legally recognized privilege, except between attorney and client,
2 shall exempt a person from the reporting requirements of sections 187.020, 187.050 and
3 187.080 to 187.087, RSMo, and sections 660.250 to 660.295, or permit a person to refuse to
4 cooperate fully with or refuse access to records by the department of health and senior
5 services in any of its investigations or activities initiated pursuant to sections 187.020,
6 187.050 and 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or permit a person
7 to refuse to give or receive evidence in any judicial proceeding relating to the likelihood of
8 harm to an eligible adult, as defined in section 660.250.

9 2. Notwithstanding any other provision of law to the contrary, in any investigation
10 conducted or action brought by the department of health and senior services pursuant to
11 any chapter relating to the care and protection of an eligible adult, the department and any
12 of its personnel shall have access to all financial, medical and mental health records of any
13 such eligible adult regardless of the institution, facility or entity in possession of such
14 records.

660.050. 1. The "Division of Aging" is hereby transferred from the department of social
2 services to the department of health and senior services by a type I transfer as defined in the
3 Omnibus State Reorganization Act of 1974. The division shall aid and assist the elderly and
4 low-income handicapped adults living in the state of Missouri to secure and maintain maximum
5 economic and personal independence and dignity. The division shall regulate adult long-term

6 care facilities pursuant to the laws of this state and rules and regulations of federal and state
7 agencies, to safeguard the lives and rights of residents in these facilities.

8 2. In addition to its duties and responsibilities enumerated pursuant to other provisions
9 of law, the division shall:

10 (1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service
11 program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73,
12 (42 U.S.C. 3001, et seq.), as amended;

13 (2) Assure that an information and referral system is developed and operated for the
14 elderly, including information on the Missouri care options program;

15 (3) Provide technical assistance, planning and training to local area agencies on aging;

16 (4) Contract with the federal government to conduct surveys of long-term care facilities
17 certified for participation in the Title XVIII program;

18 (5) Serve as liaison between the department of health and senior services and the Federal
19 Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the
20 United States Department of Health and Human Services;

21 (6) Conduct medical review (inspections of care) activities such as utilization reviews,
22 independent professional reviews, and periodic medical reviews to determine medical and social
23 needs for the purpose of eligibility for Title XIX, and for level of care determination;

24 (7) Certify long-term care facilities for participation in the Title XIX program;

25 (8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for
26 Supplemental Security Income recipients in long-term care facilities and serve as the liaison
27 between the Social Security Administration and the department of health and senior services
28 concerning Supplemental Security Income beneficiaries;

29 (9) Review plans of proposed long-term care facilities before they are constructed to
30 determine if they meet applicable state and federal construction standards;

31 (10) Provide consultation to long-term care facilities in all areas governed by state and
32 federal regulations;

33 (11) Serve as the central state agency with primary responsibility for the planning,
34 coordination, development, and evaluation of policy, programs, and services for elderly persons
35 in Missouri consistent with the provisions of subsection 1 of this section and serve as the
36 designated state unit on aging, as defined in the Older Americans Act of 1965;

37 (12) With the advice of the governor's advisory council on aging, develop long-range
38 state plans for programs, services, and activities for elderly and handicapped persons. State plans
39 should be revised annually and should be based on area agency on aging plans, statewide
40 priorities, and state and federal requirements;

41 (13) Receive and disburse all federal and state funds allocated to the division and solicit,

42 accept, and administer grants, including federal grants, or gifts made to the division or to the
43 state for the benefit of elderly persons in this state;

44 (14) Serve, within government and in the state at large, as an advocate for elderly
45 persons by holding hearings and conducting studies or investigations concerning matters
46 affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to
47 assure their rights to apply for and receive services and to be given fair hearings when such
48 services are denied;

49 (15) Provide information and technical assistance to the governor's advisory council on
50 aging and keep the council continually informed of the activities of the division;

51 (16) After consultation with the governor's advisory council on aging, make
52 recommendations for legislative action to the governor and to the general assembly;

53 (17) Conduct research and other appropriate activities to determine the needs of elderly
54 persons in this state, including, but not limited to, their needs for social and health services, and
55 to determine what existing services and facilities, private and public, are available to elderly
56 persons to meet those needs;

57 (18) Maintain and serve as a clearinghouse for up-to-date information and technical
58 assistance related to the needs and interests of elderly persons and persons with Alzheimer's
59 disease or related dementias, including information on the Missouri care options program,
60 dementia-specific training materials and dementia-specific trainers. Such dementia-specific
61 information and technical assistance shall be maintained and provided in consultation with
62 agencies, organizations and/or institutions of higher learning with expertise in dementia care;

63 (19) Provide area agencies on aging with assistance in applying for federal, state, and
64 private grants and identifying new funding sources;

65 (20) Determine area agencies on aging annual allocations for Title XX and Title III of
66 the Older Americans Act expenditures;

67 (21) Provide transportation services, home-delivered and congregate meals, in-home
68 services, counseling and other services to the elderly and low-income handicapped adults as
69 designated in the Social Services Block Grant Report, through contract with other agencies, and
70 shall monitor such agencies to ensure that services contracted for are delivered and meet
71 standards of quality set by the division;

72 (22) Monitor the process pursuant to the federal Patient Self-determination Act, 42
73 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients
74 concerning durable powers of attorney and living wills.

75 3. The division director, subject to the supervision of the director of the department of
76 health and senior services, shall be the chief administrative officer of the division and shall
77 exercise for the division the powers and duties of an appointing authority pursuant to chapter 36,

78 RSMo, to employ such administrative, technical and other personnel as may be necessary for the
79 performance of the duties and responsibilities of the division.

80 4. The division may withdraw designation of an area agency on aging only when it can
81 be shown the federal or state laws or rules have not been complied with, state or federal funds
82 are not being expended for the purposes for which they were intended, or the elderly are not
83 receiving appropriate services within available resources, and after consultation with the director
84 of the area agency on aging and the area agency board. Withdrawal of any particular program of
85 services may be appealed to the director of the department of health and senior services and the
86 governor. In the event that the division withdraws the area agency on aging designation in
87 accordance with the Older Americans Act, the division shall administer the services to clients
88 previously performed by the area agency on aging until a new area agency on aging is designated.

89 5. Any person hired by the department of health and senior services after August 13,
90 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198,
91 RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection
92 process and applicable rules and statutes during the first six months of employment. Any such
93 person shall annually, on the anniversary date of employment, present to the department evidence
94 of having completed at least twenty hours of continuing education in at least two of the following
95 categories: communication techniques, skills development, resident care, or policy update. The
96 department of health and senior services shall by rule describe the curriculum and structure of
97 such continuing education.

98 6. The division may issue and promulgate rules to enforce, implement and effectuate the
99 powers and duties established in this section and sections [198.070 and] **187.020 to 187.034,**
100 **187.050 and 187.080 to 187.087, RSMo, section 198.090, RSMo, and [sections 660.250 and**
101 **660.300 to 660.320] section 660.250.** Any rule or portion of a rule, as that term is defined in
102 section 536.010, RSMo, that is created under the authority delegated in this section shall become
103 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
104 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
105 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
106 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
107 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
108 after August 28, 2001, shall be invalid and void.

109 7. Missouri care options is a program, operated and coordinated by the division of aging,
110 which informs individuals of the variety of care options available to them when they may need
111 long-term care.

112 8. The division shall, by January 1, 2002, establish minimum dementia-specific training
113 requirements for employees involved in the delivery of care to persons with Alzheimer's disease

or related dementias who are employed by skilled nursing facilities, intermediate care facilities, residential care facilities, agencies providing in-home care services authorized by the division of aging, adult day-care programs, independent contractors providing direct care to persons with Alzheimer's disease or related dementias and the division of aging. Such training shall be incorporated into new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The department of health and senior services shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by home health and hospice agencies licensed by chapter 197, RSMo. Such training shall be incorporated into the home health and hospice agency's new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The dementia training need not require additional hours of orientation or ongoing in-service. Training shall include at a minimum, the following:

(1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;

(2) For other employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementia.

As used in this subsection, the term "employee" includes persons hired as independent contractors. The training requirements of this subsection shall not be construed as superceding any other laws or rules regarding dementia-specific training.

660.051. 1. The department of health and senior services shall provide through their Internet web site:

(1) The most recent inspection of every long-term care facility licensed in this state. If such inspection is in dispute, the inspection shall not be posted on the web site until the facility's response has been reviewed and considered for summary publication by the department;

(2) A link to the federal web site that provides a summary of facility inspections conducted over the last three years; and

(3) Information on how to obtain a copy of a complete facility inspection conducted over the last three years.

2. Any inspection that is posted on the web site which is in dispute shall contain a notation on the web site indicating that such inspection is in dispute.

660.071. 1. The division of aging shall create and distribute a publication that, to the best of their ability, provides a listing of all public or private companies or organizations providing services for older adults, including but not limited to adult day care, respite care, in-home care services, services provided by the area agency on aging and long-term care facilities operating in the state of Missouri. Such publication shall:

(1) List the companies, organizations and facilities by category and by region of the state; and

(2) Include the services available through each company, organization and facility; and

(3) Include a disclaimer that indicates that the division is providing information on the availability of services throughout the state only and such publication should not be interpreted as a rating or endorsement of any such company, organization or facility; and

(4) Include information to consumers on where to obtain inspection and survey information on listed companies, their licensure status and any other information that will provide consumers with information regarding the quality of services offered by providers of senior services; and

(5) Include the information in the current division of aging senior guide. Such publication shall replace the current senior guide and funds currently appropriated for the current senior guide shall be applied to the new publication.

2. The division of aging may contract for the production of such publication. Such contract shall contain the following provisions:

(1) The publication shall be produced in a format and manner substantially similar to the 2000 official travel guide published by the division of tourism within the department of economic development with services broken down by region of the state;

(2) The publication shall contain advertising sufficient to cover the cost of producing such publication over and above the current senior guide appropriation, but shall not exceed thirty-five percent of the publication; and

(3) If the revenue from the sale of advertising is not sufficient to cover the cost of the publication, the production costs, such as quality of paper and the use of photographs, shall be reduced and/or advertising rates shall be increased to result in a net zero cost for the state.

660.252. 1. All Medicaid participation agreements entered into between the department of social services and in-home services provider agencies shall include a requirement that all in-home services employees of such agencies receive training on identification and prevention of elder abuse and neglect.

2. All Medicaid participation agreements entered into between the department of

6 **social services and long-term care facilities shall include a requirement that such facilities**
7 **comply with the provisions of sections 660.600 to 660.608 regarding access to such facilities**
8 **by ombudsmen, or representatives of the office of the state ombudsmen for long-term care**
9 **facility residents and the office of advocacy and assistance for the elderly pursuant to**
10 **chapter 660.**

660.263. 1. Reports made pursuant to sections 660.250 to 660.295 shall be confidential
2 and shall not be deemed a public record and shall not be subject to the provisions of section
3 109.180, RSMo, or chapter 610, RSMo.

4 2. Such reports shall be accessible **without court order** for examination and copying
5 only to the following persons or offices, or to their designees:

6 (1) The department or any person or agency designated by the department;

7 (2) The attorney general;

8 (3) The department of mental health for persons referred to, **from, or through** that
9 department;

10 (4) Any appropriate law enforcement agency; and

11 (5) The eligible adult or [his] **such adult's** legal guardian **or any other person**
12 **designated by the eligible adult.**

13 3. The name of the reporter shall not be disclosed unless:

14 (1) Such reporter specifically authorizes disclosure of his **or her** name; and

15 (2) The department determines that disclosure of the name of the reporter is necessary
16 in order to prevent further harm to an eligible adult.

17 4. Any person who violates the provisions of this section, or who permits or encourages
18 the unauthorized dissemination of information contained in the central registry and in reports and
19 records made pursuant to sections 660.250 to 660.295, shall be guilty of a class A misdemeanor.

20 5. The department shall maintain a central registry capable of receiving and maintaining
21 reports received in a manner that facilitates rapid access and recall of the information reported,
22 and of subsequent investigations and other relevant information. The department shall
23 electronically record any telephone report of suspected abuse and neglect received by the
24 department and such recorded reports shall be retained by the department for a period of one year
25 after recording.

26 6. Although reports to the central registry may be made anonymously, the department
27 shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect,
28 attempt to obtain the name and address of any person making a report.

660.270. When the department receives a report that there is a likelihood of [serious
2 physical harm] **abuse or neglect, as defined in section 660.250**, to an eligible adult and that [he
3 is] **such adult may be** in need of protective services and the department is unable to conduct an

4 investigation because **any person has prevented such investigation, including but not limited**
5 **to denial of** access to the eligible adult [is barred by any person], the director may petition the
6 appropriate court **to enjoin interference with the investigation or** for a warrant to enter upon
7 the described premises and investigate the report. The application for the **injunction or** warrant
8 shall identify the eligible adult and the facts and circumstances which require the issuance of the
9 **injunction or** warrant. [The director may also seek an order to enjoin the person barring access
10 from interfering with the investigation.] If the court finds that, based on the report and relevant
11 circumstances and facts, probable cause exists showing that the eligible adult faces a likelihood
12 of [serious physical harm and is] **abuse or neglect, as defined in section 660.250, and may be**
13 in need of protective services and the director has been prevented by another person from
14 investigating the report, **including but not limited to denial of access to the eligible adult,** the
15 court may issue the warrant or enjoin the interference with the investigation or both.

660.401. 1. The division of medical services within the department of social services
2 **shall restructure the adult day care program requirements to allow for programs that**
3 **provide a basic level of care without the rehabilitative services provided by a licensed**
4 **professional therapist.**

5 **2. The division shall authorize additional Medicaid reimbursement to providers for**
6 **the transportation of clients to and from their homes for adult day care programs.**

7 **3. To increase the participation of long-term care facilities in the adult day care**
8 **program, the division shall amend the rules regarding adult day care programs with**
9 **existing long-term care facilities. The changes shall eliminate the duplication of program**
10 **requirements while continuing to ensure the care level and appropriate direct care staffing**
11 **for the protection of nursing home residents and adult day care clients.**

Section 1. No long-term care facility shall be more than one hundred twenty days
2 **delinquent in payments to vendors of essential services, including but not limited to**
3 **vendors of food, utilities, maintenance or pharmaceutical supplies, if such delinquency**
4 **affects the quality of care received by the facility's residents. Upon receipt and verification**
5 **of a complaint of delinquency of payment from a vendor of essential services, the**
6 **department of health and senior services may require the facility to draft a plan of**
7 **correction. If the department determines that the corrective measures are inadequate or**
8 **have not been implemented, the department may impose sanctions against the facility,**
9 **including revocation of the facility's license.**

Section 2. 1. The division of medical services in the department of social services
2 **shall promulgate rules to permit a Medicaid reimbursement rate adjustment for**
3 **participating long-term care facilities that experience a change in ownership. Such rules**
4 **shall include provisions that:**

5 **(1) Permit any participating long-term care facility with a prospective rate to make**
6 **a written request for an adjustment to its prospective rate due to a change in ownership**
7 **which occurred within the last four years;**

8 **(2) Require such written request to clearly and specifically identify the conditions**
9 **for which the rate adjustment is sought;**

10 **(3) Require that the dollar amount of the requested rate adjustment be supported**
11 **by complete, accurate and documented records satisfactory to the division of medical**
12 **services; and**

13 **(4) Require the division of medical services to consider a request withdrawn if the**
14 **division makes a written request for additional information and the facility does not**
15 **comply within ninety days of such request.**

16 **2. A rate adjustment based on a change in ownership shall be permitted if the**
17 **following conditions are met:**

18 **(1) No principal of either the new owner or operating company of the facility was**
19 **involved in the previous ownership;**

20 **(2) The facility must demonstrate that costs have increased as a result of the change**
21 **of ownership. Increase in costs above the state average as of July 1, 2002, shall not be**
22 **considered and the provider shall demonstrate that the increase in cost contributed to**
23 **improved quality of care, life or environment for the residents; and**

24 **(3) The facility must demonstrate that current reimbursement is inadequate to meet**
25 **the cost of providing the improved care, environment, and enhanced quality of life of the**
26 **resident.**

27 **3. The division of medical services shall review on a case-by-case basis any request**
28 **made by a facility and shall consider improved department of health & senior services**
29 **surveys, costs prior to and after the change of ownership, licensure applications, as well as**
30 **any other documentation provided by the facility or requested by the division of medical**
31 **services. Rate adjustments shall not exceed the average state reimbursement as of July 1,**
32 **2002, and shall not exceed the calculated per-resident per-day cost shown on the most**
33 **recent cost report; except that additional capital components may be considered if the**
34 **facility can demonstrate that the capital expenditure did in fact enhance the environment**
35 **for the resident.**

36 **4. The rate increase shall be calculated as follows:**

37 **(1) The rate adjustment shall be based on either the facility's most recently filed**
38 **cost report which occurred under the new ownership or on the state average cost, as of July**
39 **1, 2002, whichever is lower. The division shall not have the authority to disallow certain**
40 **cost centers which may be inflated due to the type of ownership or management and may**

41 elect to use average state cost in any such disallowed center;

42 (2) For capitalized costs, a capital component per diem shall be calculated pursuant
43 to 13 CSR 70-10. The rate adjustment shall be the difference between the capital
44 component per diem prior to the change in ownership and the capital component per diem
45 after the change in ownership.

2 [198.070. 1. When any physician, dentist, chiropractor, optometrist,
3 podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister,
4 Christian Science practitioner, peace officer, pharmacist, physical therapist, facility
5 administrator, employee in a facility, or employee of the department of social
6 services or of the department of mental health, coroner, dentist, hospital and clinic
7 personnel engaged in examination, other health practitioners, mental health
8 professional, adult day care worker, probation or parole officer, law enforcement
9 official or other person with the care of a person sixty years of age or older or an
10 eligible adult has reasonable cause to believe that a resident of a facility has been
11 abused or neglected, he or she shall immediately report or cause a report to be made
12 to the department.

13 2. The report shall contain the name and address of the facility, the name of
14 the resident, information regarding the nature of the abuse or neglect, the name of the
15 complainant, and any other information which might be helpful in an investigation.

16 3. Any person required in subsection 1 of this section to report or cause a
17 report to be made to the department who knowingly fails to make a report within a
18 reasonable time after the act of abuse or neglect as required in this subsection is
19 guilty of a class A misdemeanor.

20 4. In addition to those persons required to report pursuant to subsection 1 of
21 this section, any other person having reasonable cause to believe that a resident has
22 been abused or neglected may report such information to the department.

23 5. Upon receipt of a report, the department shall initiate an investigation
24 within twenty-four hours and, as soon as possible during the course of the
25 investigation, shall notify the resident's next of kin or responsible party of the report
26 and the investigation and further notify them whether the report was substantiated or
27 unsubstantiated. As provided in section 565.186, RSMo, substantiated reports of
28 elder abuse shall be promptly reported by the department to the appropriate law
29 enforcement agency and prosecutor.

30 6. If the investigation indicates possible abuse or neglect of a resident, the
31 investigator shall refer the complaint together with the investigator's report to the
32 department director or the director's designee for appropriate action. If, during the
33 investigation or at its completion, the department has reasonable cause to believe that
34 immediate removal is necessary to protect the resident from abuse or neglect, the
35 department or the local prosecuting attorney may, or the attorney general upon
36 request of the department shall, file a petition for temporary care and protection of
37 the resident in a circuit court of competent jurisdiction. The circuit court in which
the petition is filed shall have equitable jurisdiction to issue an ex parte order

granting the department authority for the temporary care and protection of the resident, for a period not to exceed thirty days.

7. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

8. Anyone who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted in bad faith or with malicious purpose. It is a crime pursuant to section 565.186 and 565.188, RSMo, for any person to purposely file a false report of elder abuse or neglect.

9. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

10. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing division of aging information and referral telephone contact line, residents, their families and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

11. Any person who knowingly abuses or neglects a resident of a facility shall be guilty of a class D felony.

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 660.315, RSMo, to have recklessly, knowingly or purposely abused or neglected a resident while employed in any facility.

13. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hot-line call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.]

[565.186. The department of social services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295, RSMo, and upon substantiation of the report of elder abuse, shall promptly report the incident to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are required pursuant to sections 660.250 to 660.295, RSMo.]

[565.188. 1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident intern, nurse, hospital and clinic

3 personnel engaged in examination, care or treatment of persons, or other health
4 practitioners, psychologists, mental health professional, social worker, adult day care
5 center worker, nursing home worker, probation or parole officer, Christian Science
6 practitioner, peace officer or law enforcement official, or other person with
7 responsibility for the care of a person sixty years of age or older has reasonable cause
8 to suspect that such a person has been subjected to abuse or neglect or observes such
9 a person being subjected to conditions or circumstances which would reasonably
10 result in abuse or neglect, he shall immediately report or cause a report to be made
11 to the department in accordance with the provisions of sections 660.250 to 660.295,
12 RSMo. Any other person who becomes aware of circumstances which may
13 reasonably be expected to be the result of or result in abuse or neglect may report to
14 the department.

15 2. Any person who knowingly fails to make a report as required in subsection
16 1 of this section is guilty of a class A misdemeanor.

17 3. Any person who purposely files a false report of elder abuse or neglect
18 shall be guilty of a class A misdemeanor.

19 4. Every person who has been previously convicted of or pled guilty to
20 making a false report to the department and who is subsequently convicted of making
21 a false report under subsection 3 of this section is guilty of a class D felony.

22 5. Evidence of prior convictions of false reporting shall be heard by the court,
23 out of the hearing of the jury, prior to the submission of the case to the jury, and the
24 court shall determine the existence of the prior convictions.]

2 [565.190. Any person, official or institution complying with the provisions
3 of section 565.188 in the making of a report, or in cooperating with the department
4 in any of its activities pursuant to sections 565.186 and 565.188, except any person,
5 official or institution violating section 565.180, 565.182 or 565.184, shall be immune
6 from any civil or criminal liability for making such a report, or in cooperating with
7 the department, unless such person acted negligently, recklessly, in bad faith, or with
malicious purpose.]

2 [660.300. 1. Beginning January 1, 1993, when any physician, dentist,
3 chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker,
4 psychologist, minister, Christian Science practitioner, peace officer, pharmacist,
5 physical therapist, in-home services owner, in-home services operator, in-home
6 services employee, or employee of the department of social services or of the
7 department of health or of the department of mental health has reasonable cause to
8 believe that an in-home services client has been abused or neglected, as a result of
9 in-home services, he shall immediately report or cause a report to be made to the
department.

10 2. Any person required in subsection 1 of this section to report or cause a
11 report to be made to the department who fails to do so within a reasonable time after
12 the act of abuse or neglect is guilty of a class A misdemeanor.

13 3. The report shall contain the names and addresses of the in-home services
14 provider agency, the in-home services employee, the in-home services client,

information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

4. In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that an in-home services client has been abused or neglected by an in-home services employee may report such information to the department.

5. Upon receipt of a report, the department shall initiate a prompt and thorough investigation.

6. If the investigation indicates possible abuse or neglect of an in-home services client, the investigator shall refer the complaint together with his report to the department director or his designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the in-home services client from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the in-home services client in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the in-home services client, for a period not to exceed thirty days.

7. Reports shall be confidential, as provided under section 660.320.

8. Anyone, except any person who has abused or neglected an in-home services client, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

9. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

10. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or an in-home services employee because he or any member of his family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency or any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

11. Any person who knowingly abuses or neglects an in-home services client shall be guilty of a class D felony.

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home services client while employed by an in-home services provider agency.]

[660.305. 1. Any person having reasonable cause to believe that a

2 misappropriation of an in-home services client's property or funds, or the falsification
3 of any documents verifying service delivery to the in-home services client has
4 occurred, may report such information to the department.

5 2. For each report the division shall attempt to obtain the names and
6 addresses of the in-home services provider agency, the in-home services employee,
7 the in-home services client, information regarding the nature of the misappropriation
8 or falsification, the name of the complainant, and any other information which might
9 be helpful in an investigation.

10 3. Any in-home services provider agency or in-home services employee who
11 puts to his own use or the use of the in-home services provider agency or otherwise
12 diverts from the in-home services client's use any personal property or funds of the
13 in-home services client, or falsifies any documents for service delivery, shall be
14 guilty of a class A misdemeanor.

15 4. Upon receipt of a report, the department shall initiate an investigation.

16 5. If the investigation indicates probable misappropriation of property or
17 funds, or falsification of any documents for service delivery of an in-home services
18 client, the investigator shall refer the complaint together with his report to the
19 department director or his designee for appropriate action.

20 6. Reports shall be confidential, as provided under section 660.320.

21 7. Anyone, except any person participating in or benefitting from the
22 misappropriation of funds, who makes a report pursuant to this section or who
23 testifies in any administrative or judicial proceeding arising from the report shall be
24 immune from any civil or criminal liability for making such a report or for testifying
25 except for liability for perjury, unless such person acted negligently, recklessly, in
26 bad faith, or with malicious purpose.

27 8. Within five working days after a report required to be made under this
28 section is received, the person making the report shall be notified in writing of its
29 receipt and of the initiation of the investigation.

30 9. No person who directs or exercises any authority in an in-home services
31 provider agency shall harass, dismiss or retaliate against an in-home services client
32 or employee because he or any member of his family has made a report of any
33 violation or suspected violation of laws, ordinances or regulations applying to the
34 in-home services provider agency or any in-home services employee which he has
35 reasonable cause to believe has been committed or has occurred.

36 10. The department shall maintain the employee disqualification list and
37 place on the employee disqualification list the names of any persons who have been
38 finally determined by the department to, pursuant to section 660.315, have
39 misappropriated any property or funds, or falsified any documents for service
40 delivery of an in-home services client while employed by an in-home services
41 provider agency.]

2 [660.315. 1. After an investigation and a determination has been made to
3 place a person's name on the employee disqualification list, that person shall be
notified in writing mailed to his last known address that:

4 (1) An allegation has been made against him, the substance of the allegation
5 and that an investigation has been conducted which tends to substantiate the
6 allegation;

7 (2) His name will be included in the employee disqualification list of the
8 department;

9 (3) The consequences of being so listed including the length of time to be
10 listed; and

11 (4) His rights and the procedure to challenge the allegation.

12 2. If no reply has been received within thirty days of mailing the notice, the
13 department may include the name of such person on its list. The length of time the
14 person's name shall appear on the employee disqualification list shall be determined
15 by the director or his designee, based upon the criteria contained in subsection 9 of
16 this section.

17 3. If the person so notified wishes to challenge the allegation, he may file an
18 application for a hearing with the department. The department shall grant the
19 application within thirty days after receipt by the department and set the matter for
20 hearing, or the department shall notify the applicant that, after review, the allegation
21 has been held to be unfounded and the applicant's name will not be listed.

22 4. If a person's name is included on the employee disqualification list without
23 notice by the department, such person may file a request with the department for
24 removal of the name or for a hearing. Within thirty days after receipt of the request,
25 the department shall either remove the name from the list or grant a hearing and set
26 a date therefor.

27 5. Any hearing shall be conducted in the county of the person's residence by
28 the director of the division of aging or his designee. The provisions of chapter 536,
29 RSMo, for a contested case except those provisions or amendments which are in
30 conflict with this section, shall apply to and govern the proceedings contained in this
31 section and the rights and duties of the parties involved. The person appealing such
32 an action shall be entitled to present evidence, pursuant to the provisions of chapter
33 536, RSMo, relevant to the allegations.

34 6. Upon the record made at the hearing, the director of the division of aging
35 shall determine all questions presented and shall determine whether the person shall
36 be listed on the employee disqualification list. The director of the division of aging
37 shall clearly state the reasons for his decision and shall include a statement of
38 findings of fact and conclusions of law pertinent to the questions in issue.

39 7. A person aggrieved by the decision following the hearing shall be
40 informed of his right to seek judicial review as provided under chapter 536, RSMo.
41 If the person fails to appeal the director's findings, those findings shall constitute a
42 final determination that the person shall be placed on the employee disqualification
43 list.

44 8. A decision by the director shall be inadmissible in any civil action brought
45 against a facility or the in-home services provider agency and arising out of the facts
46 and circumstances which brought about the employment disqualification proceeding,

47 unless the civil action is brought against the facility or the in-home services provider
48 agency by the department of social services or one of its divisions.

49 9. The length of time the person's name shall appear on the employee
50 disqualification list shall be determined by the director or his designee, based upon
51 the following:

52 (1) Whether the person acted recklessly, knowingly or purposely, as defined
53 in chapter 562, RSMo;

54 (2) The degree of the infliction of physical, sexual, or emotional injury or
55 harm; or the degree of the imminent danger to the health, safety or welfare of a
56 resident or in-home services client;

57 (3) The degree of misappropriation of the property or funds, or falsification
58 of any documents for service delivery of an in-home services client;

59 (4) Whether the person has previously been listed on the employee
60 disqualification list;

61 (5) Any mitigating circumstances; and

62 (6) Whether alternative sanctions resulting in conditions of continued
63 employment are appropriate in lieu of placing a person's name on the employee
64 disqualification list. Such conditions of employment may include, but are not limited
65 to, additional training and employee counseling. Conditional employment shall
66 terminate upon the expiration of the designated length of time and the person's
67 submitting documentation which fulfills the division's requirements.

68 10. The removal of any person's name from the list under this section shall
69 not prevent the director from keeping records of all acts finally determined to have
70 occurred under this section.

71 11. The department shall provide the list maintained pursuant to this section
72 to other state departments upon request and to any person, corporation or association
73 who:

74 (1) Is licensed as an operator under chapter 198, RSMo;

75 (2) Provides in-home services under contract with the department;

76 (3) Employs nurses and nursing assistants for temporary or intermittent
77 placement in health care facilities;

78 (4) Is approved by the department to issue certificates for nursing assistants
79 training; or

80 (5) Is an entity licensed under chapter 197, RSMo. The department shall
81 inform any person listed above who inquires of the division of aging whether or not
82 a particular name is on the list. The division may require that the request be made
83 in writing.

84 12. No person, corporation or association who received the employee
85 disqualification list under subsection 11 of this section shall knowingly employ any
86 person who is on the employee disqualification list. Any person, corporation or
87 association who received the employee disqualification list under subsection 11 of
88 this section, or any person responsible for providing health care service, who declines
89 to employ or terminates a person whose name is listed in this section shall be

immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

13. Any person who has been listed on the employee disqualification list may request that the director remove his name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make conditional the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.]

[660.317. 1. For the purposes of this section, the term "provider" means any person, corporation or association who:

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities; or
- (4) Is an entity licensed pursuant to chapter 197, RSMo;
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health.

2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section 43.540, RSMo.

3. Beginning August 28, 1997, not later than two working days of hiring any person for a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees hired through an employment agency, the employment agency shall prior to sending a temporary employee to a provider:

(1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence; and

(2) Make an inquiry to the department of social services, whether the person is listed on the employee disqualification list as provided in section 660.315.

4. When the provider requests a criminal background check pursuant to section 43.530, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check.

30 5. An applicant for a position to have contact with patients or residents of a
31 provider shall:

32 (1) Sign a consent form as required by section 43.540, RSMo, so the provider
33 may request a criminal records review;

34 (2) Disclose the applicant's criminal history. For the purposes of this
35 subdivision "criminal history" includes any conviction or a plea of guilty to a
36 misdemeanor or felony charge and shall include any suspended imposition of
37 sentence, any suspended execution of sentence or any period of probation or parole;
38 and

39 (3) Disclose if the applicant is listed on the employee disqualification list as
40 provided in section 660.315.

41 6. An applicant who knowingly fails to disclose his criminal history as
42 required in subsection 5 of this section is guilty of a class A misdemeanor. A
43 provider is guilty of a class A misdemeanor if the provider knowingly hires a person
44 to have contact with patients or residents and the person has been convicted of, pled
45 guilty to or nolo contendere in this state or any other state or has been found guilty
46 of a crime, which if committed in Missouri would be a class A or B felony violation
47 of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section
48 198.070, RSMo, or section 568.020, RSMo.

49 7. The highway patrol shall examine whether protocols can be developed to
50 allow a provider to request a statewide fingerprint criminal records review check
51 through local law enforcement agencies.

52 8. A provider may use a private investigatory agency rather than the highway
53 patrol to do a criminal history records review check, and alternatively, the applicant
54 pays the private investigatory agency such fees as the provider and such agency shall
55 agree.

56 9. The department of social services shall promulgate rules and regulations
57 to waive the hiring restrictions pursuant to this section for good cause. For purposes
58 of this section, "good cause" means the department has made a determination by
59 examining the employee's prior work history and other relevant factors that such
60 employee does not present a risk to the health or safety of residents.]

2 [660.320. Reports confidential under section 198.070, RSMo, and sections
3 660.300 to 660.315 shall not be deemed a public record and shall not be subject to
4 the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the
5 complainant or any person mentioned in the reports shall not be disclosed unless:

6 (1) The complainant, resident or the in-home services client mentioned
7 agrees to disclosure of his name;

8 (2) The department determines that disclosure is necessary in order to
9 prevent further abuse, neglect, misappropriation of property or funds, or falsification
10 of any documents verifying service delivery to an in-home services client;

11 (3) Release of a name is required for conformance with a lawful subpoena;

12 (4) Release of a name is required in connection with a review by the
administrative hearing commission in accordance with section 198.039, RSMo;

13 (5) The department determines that release of a name is appropriate when
14 forwarding a report of findings of an investigation to a licensing authority; or
15 (6) Release of a name is requested by the division of family services for the
16 purpose of licensure under chapter 210, RSMo.]